

No. 12774, No. 12791, No. 12792, No. 12793,
No. 12798, No. 12799, No. 12800, and No. 12802.

United States
Court of Appeals
for the Ninth Circuit.

OREGON-WASHINGTON PLYWOOD COMPANY, vs. FEDERAL TRADE COMMISSION,	Petitioner, 12774 Respondent.
WHEELER, OSGOOD CO., vs. FEDERAL TRADE COMMISSION,	Petitioner, Respondent.
NORTHWEST DOOR COMPANY, vs. FEDERAL TRADE COMMISSION,	Petitioner, Respondent.
WASHINGTON VENEER CORPORATION, vs. FEDERAL TRADE COMMISSION,	Petitioner, Respondent.
DOUGLAS FIR PLYWOOD ASSOCIATION, et al., vs. FEDERAL TRADE COMMISSION,	Petitioners, Respondent.
PACIFIC MUTUAL DOOR COMPANY, vs. FEDERAL TRADE COMMISSION,	Petitioner, Respondent.
WEST COAST PLYWOOD COMPANY, vs. FEDERAL TRADE COMMISSION,	Petitioner, Respondent.
M. AND M. WOOD WORKING COMPANY, vs. FEDERAL TRADE COMMISSION,	Petitioner, Respondent.

Transcript of Record

Petitions To Set Aside Order of the
Federal Trade Commission

United States
Court of Appeals
for the Ninth Circuit.

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vs.	
FEDERAL TRADE COMMISSION,	Respondent.
WHEELER, OSGOOD CO.,	Petitioner,
vs.	
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

GEORGE J. PERKINS,

1124 Board of Trade Bldg.,

Portland, Oregon.,

For Petitioner Oregon-Washington Ply-
wood Co.

W. E. EVENSON,

WILLARD E. SKEEL,

914 Insurance Bldg.,

Seattle, Wash.,

For Petitioner Washington Veneer Corp.

SABIN & MALARKEY,

ROBERT L. SABIN,

HOWARD H. CAMPBELL,

1111 Wilcox Bldg.,

Portland, Oregon,

For Petitioner M. & M. Wood Working Co.

EISENHOWER, HUNTER & RAMSDELL,

E. N. EISENHOWER,

CHAS. D. HUNTER, JR.,

JAMES V. RAMSDELL,

1220 Puget Sound Bank Bldg.,

Tacoma, Wash.,

For Petitioners, Northwest Door Co., The
Wheeler, Osgood Co.

THEODORE B. BRUENER,

Becker Bldg.,
Aberdeen, Wash.,

For Petitioner West Coast Plywood Co.

McMICKEN, RUPP & SCHWEPPE,

ALFRED J. SCHWEPPE,

M. A. MARQUIS,

JOHN N. RUPP,

657 Colman Bldg.,
Seattle, Washington,

For Petitioners, Douglas Fir Plywood
Assoc., Douglas Fir Plywood Information
Bureau, Anacortes Veneer, Inc., Asso-
ciated Plywood Mills, Inc., Elliott Bay
Mill Co., Harbor Plywood Corp., United
States Plywood Corp., Vancouver Ply-
wood & Veneer, Inc., Robinson Plywood
& Timber Co., Weyerhaeuser Sales Co.,
and Wallace E. Difford.

KRAUSE, HIRSCH, LEVIN & HEILPERN,

RAYMOND T. HEILPERN,

225 Broadway,
New York 7, N. Y.,

For Petitioner United States Plywood
Corp.

J. E. NOLAN,
Box 1645, Tacoma, Wash.

BRIGGS, GILBERT, MORTON, KYLE &
MACARTNEY,

J. NEIL MORTON,

W-2162 First National Bank Bldg.,
St. Paul 1, Minn.,

For Petitioner Weyerhaeuser Sales Co.

JAMES W. CASSEDY,

Asst. General Counsel,
Federal Trade Comm.,
Washington, D. C.,

For the Respondent.

United States of America Before Federal
Trade Commission

Docket No. 5529

In the Matter of:

DOUGLAS FIR PLYWOOD ASSOCIATION;
and HERMAN TENZLER, CHARLES E.
DEVLIN, and HARRISON CLARK, All In-
dividually, and as Officers of the DOUGLAS
FIR PLYWOOD ASSOCIATION; and E. W.
DANIELS, R. E. SEELEY, N. O. CRUVER,
ARNOLD KOUTONEN, H. E. TENZLER,
FROST SNYDER, B. V. HANCOCK, T. B.
MALARKEY, and C. E. DEVLEN, All Indi-
vidually, and as Members of the Management
Committee of the DOUGLAS FIR PLY-
WOOD ASSOCIATION; and DOUGLAS
FIR PLYWOOD INFORMATION BU-
REAU, a Voluntary Organization; and ASSO-
CIATED PLYWOOD MILLS, INC., BUF-
FELEN LUMBER & MANUFACTURING
COMPANY, a Corporation, COOS BAY
LUMBER COMPANY, a Corporation, EL-
LIOTT BAY MILL COMPANY, a Corpora-
tion, EUGENE PLYWOOD COMPANY, a
Corporation, HARBOR PLYWOOD CORPO-
RATION, M & M WOODWORKING COM-
PANY, a Corporation, NORTHWEST DOOR
COMPANY, a Corporation, OLYMPIA VE-
NEER COMPANY, a Corporation, OREGON-
WASHINGTON PLYWOOD COMPANY, a

Corporation, PACIFIC PLYWOOD CORPORATION, UNITED STATES PLYWOOD CORPORATION, VANCOUVER PLYWOOD & VENEER COMPANY, a Corporation, WASHINGTON VENEER COMPANY a Corporation, WEST COAST PLYWOOD COMPANY, a Corporation, and THE WHEELER, OSGOOD COMPANY, All Individually and as Members of the DOUGLAS FIR PLYWOOD ASSOCIATION; and ABERDEEN PLYWOOD CORPORATION, ANACORTES VENEER, INC., BELLINGHAM PLYWOOD CORPORATION, CASCADES PLYWOOD CORPORATION, NICOLAI PLYWOOD COMPANY, a Corporation, OLYMPIC PLYWOOD COMPANY, a Corporation, OREGON PLYWOOD COMPANY, a Corporation, PENINSULA PLYWOOD CORPORATION, PUGET SOUND PLYWOOD, INC., ROBINSON MANUFACTURING COMPANY, a Corporation, ST. PAUL & TACOMA LUMBER COMPANY, a Corporation, SIMPSON LOGGING COMPANY, a Corporation, SIMPSON INDUSTRIES, ESLIE Q. WALTON and E. D. WALTON, Partners Trading as WALTON PLYWOOD COMPANY, WESTERN DOOR & PLYWOOD CORPORATION, and SPRINGFIELD PLYWOOD CORPORATION, All Individually, and as Subscribers to the DOUGLAS FIR PLYWOOD CORPORATION; and PACIFIC MUTUAL DOOR

COMPANY, a Corporation, SMITH-WOOD PRODUCTS, INC., WEYERHAEUSER TIMBER COMPANY, a Corporation, and WALLACE E. DIFFORD.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the Douglas Fir Plywood Association, its officers, members of its management committee and the members of and the subscribers to the Douglas Fir Plywood Association; the Douglas Fir Plywood Information Bureau, a voluntary organization; Pacific Mutual Door Company, a corporation; Smith Wood Products, Inc., and Weyerhaeuser Timber Company, a corporation; and Wallace E. Difford, an individual, hereinafter referred to as respondents, have violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph One: The respondent, Douglas Fir Plywood Association, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located in the Tacoma Building, [2*] Tacoma 2, Washington. The Association is composed of approximately thirty-two individuals, partnerships, and

*Page numbering appearing at foot of page of original Certified Transcript of Record.

corporations who are located principally in the States of Washington and Oregon, and who are engaged in the operation of mills for the manufacture of various plywood products and the sale and distribution of said products when so manufactured, or in the sale and distribution of plywood products.

The said respondent, the Douglas Fir Plywood Association, hereinafter referred to as respondent Association, was formed as a voluntary organization in about 1933 and served as the Code Authority for the industry during the period of the NRA. After the NRA was held unconstitutional the voluntary Association continued as a trade organization and in the latter part of 1936, it was organized as a non-profit corporation under the laws of the State of Washington for the declared purposes, among others of dealing with common industry problems of management such as those involved in the production, distribution, employment and financial functions of the plywood industry, and to secure cooperative action in advancing the common purposes of its members, to foster equity in business usages, and to promote activities aimed to enable the industry to conduct itself with the greatest economy and efficiency.

The names and addresses of the present officers of said respondent Association who, in their individual capacities, and as such officers of said respondent Association are named as respondents herein are: Herman Tenzler, Secretary, c/o Northwest Door Company, 1203 East D Street, Tacoma 1, Washington; Charles E. Devlin, Managing Di-

rector, c/o Douglas Fir Plywood Association, Tacoma Building, Tacoma 2, Washington; and Harrison Clark, Assistant Manager, c/o Douglas Fir Plywood Association, Tacoma Building, Tacoma 2, Washington.

The names and addresses of the members of the Management Committee of said respondent Association who, in their individual capacities, and as such members of said Management Committee of said respondent Association, are named as respondents herein, are: E. W. Daniels, Chairman, c/o Harbor Plywood Corporation, Hoquiam 2, Washington; R. E. Seeley, c/o Olympic Plywood Company, Shelton, Washington; N. O. Cruver, c/o The Wheeler, Osgood Company, 1216 St. Paul Street, Tacoma 1, Washington; Arnold Koutonen, c/o Olympia Veneer Company, Olympia, Washington; H. E. Tenzler, c/o Northwest Door Company, 1203 East D Street, Tacoma 1, Washington; Frost Snyder, c/o Vancouver Plywood & Veneer [3] Company, Vancouver, Washington; B. V. Hancock, c/o Cascades Plywood Corporation, 1008 Public Service Building, Portland 4, Oregon; T. B. Malarkey, c/o M & M Woodworking Company, 2301 North Columbia Road, Portland 3, Oregon; C. E. Devlin, c/o Douglas Fir Plywood Association, Tacoma Building, Tacoma 2, Washington.

Respondent, Douglas Fir Plywood Information Bureau, hereinafter referred to as respondent Bureau, is a voluntary organization whose address is Post Office Box 1224, Tacoma, Washington. Respondent Bureau maintains an office in the Tacoma

Building, Tacoma 2, Washington, and was established, as declared by said respondent Bureau, for purposes of the Robinson-Patman Act. It functions to handle the transmittal of forms to applicants for classification, to assemble the data submitted by applicants, and to make recommendations to the member mills as to the classification of individual accounts. Respondent Bureau is operated as an activity of member and subscriber respondents and is advised by counsel for the respondent Association, and respondent Bureau is financed by the diversion of money paid as dues by the mills to the respondent Association.

Paragraph Two: Respondent, Associated Plywood Mills, Inc., is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business at 2nd and Garfield Streets, Eugene, Oregon. It maintains plants at Eugene and Willamina, Oregon.

Respondent, Buffelen Lumber & Manufacturing Company, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at Tacoma 1, Washington.

Respondent, Coos Bay Lumber Company, is a corporation organized and existing under the laws of the State of Delaware with its principal office located at Marshfield within the State of Oregon. It maintains a plant at Coquille, Oregon.

Respondent, Elliott Bay Mill Company, is a corporation organized and existing under the laws of the State of Washington with its principal office

and place of business located at 600 West Spokane Street, Seattle, Washington.

Respondent, Eugene Plywood Company, is a corporation organized and existing under the laws of the State of Oregon with its principal office and place of business located at Eugene, Oregon. [4]

Respondent, Harbor Plywood Corporation, is a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business located at Hoquiam, Washington.

Respondent, M & M Woodworking Company, is a corporation organized and existing under the laws of the State of Oregon with its principal office and place of business located at 2301 North Columbia Road, Portland 3, Oregon. Said respondent maintains plants located at Longview, Washington, and Albany and Portland, Oregon.

Respondent, Northwest Door Company, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at 1203 East D Street, Tacoma 1, Washington.

Respondent, Olympia Veneer Company, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at Olympia, Washington.

Respondent, Oregon-Washington Plywood Company, is a corporation organized and existing under the laws of the State of Oregon with its principal

office and place of business located at 1549 Dock Street, Tacoma 2, Washington.

Respondent, Pacific Plywood Corporation, is a corporation organized and existing under the laws of the State of Oregon, with its principal office and place of business located at Willamina, Oregon.

Respondent, United States Plywood Corporation, is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 55 West 44th Street, New York 18, New York. Said respondent maintains a plant located at Seattle, Washington.

Respondent, Vancouver Plywood & Veneer Company, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at Vancouver, Washington.

Respondent, Washington Veneer Company, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at Olympia, Washington.

Respondent, West Coast Plywood Company, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at Aberdeen, Washington. [5]

Respondent, The Wheeler, Osgood Company, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at 1216 St. Paul Street, Tacoma 1, Washington.

All of said respondents hereinbefore named in Paragraph Two are members of respondent Association and are hereinafter, for the sake of brevity, referred to as Member respondents.

Paragraph Three: Respondent, Aberdeen Plywood Corporation, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at Aberdeen, Washington.

Respondent, Anacortes Veneer, Inc., is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at Anacortes, Washington.

Respondent, Bellingham Plywood Corporation, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located in Bellingham, Washington.

Respondent, Cascades Plywood Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 1008 Public Service Building, Portland 4, Oregon. Said respondent maintains a plant at Lebanon, Oregon.

Respondent, Nicolai Plywood Company, is a corporation organized and existing under the laws of the State of Oregon with its principal office and place of business located c/o Oregon-Washington Plywood Company, 1549 Dock Street, Tacoma, Washington. Said respondent is a wholly-owned subsidiary of Oregon-Washington Plywood Company.

Respondent, Olympic Plywood Company, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at Shelton, Washington.

Respondent, Oregon Plywood Company, is a corporation organized and existing under the laws of the State of Oregon with its principal office and place of business located at 28 Church Street, Buffalo, New York. Said respondent maintains a plant located at Sweet Home, Oregon. [6]

Respondent, Peninsula Plywood Corporation, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at Port Angeles, Washington.

Respondent, Puget Sound Plywood, Inc., is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at Tacoma, Washington.

Respondent, Robinson Manufacturing Company, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at Everett, Washington.

Respondent, St. Paul & Tacoma Lumber Company, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at 1220 St. Paul Avenue, Tacoma 2, Washington.

Respondent, Simpson Logging Company, is a

corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at Shelton, Washington. Said respondent maintains a plant located at McCleary, Washington.

Respondent, Simpson Industries, is a sales division of the respondent Simpson Logging Company with its principal office and place of business located at 1007 White Building, Seattle, Washington.

Respondents, Eslye Q. Walton and E. D. Walton, are partners trading and doing business as Walton Plywood Company with their principal office and place of business located at Everett, Washington.

Respondent, Western Door & Plywood Corporation, is a corporation organized and existing under the laws of the State of Oregon with its principal office and place of business located at Albany, Oregon.

Respondent, Springfield Plywood Corporation, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at Olympia, Washington. Said respondent maintains a plant located at Springfield, Oregon. [7]

All of the said respondents hereinbefore named in Paragraph Three are subscribers to the respondent Douglas Fir Plywood Association and are engaged in the operation of mills for the manufacture of and in the sale and distribution of various plywood products, or the sale and distribution of various plywood products. Said respondents are here-

inafter, for the sake of brevity, referred to as Subscriber respondents.

Paragraph Four: Respondent, Pacific Mutual Door Company, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located in the Tacoma Building, Tacoma, Washington.

Respondent, Smith Wood-Products, Inc., is a corporation organized and existing under the laws of the State of Missouri with its principal office and place of business located at Kansas City, Missouri.

Respondent, Weyerhaeuser Timber Company, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located in the Tacoma Building, Tacoma, Washington.

The said respondents hereinbefore mentioned in Paragraph Four are engaged in the distribution of plywood products. Said respondents, while not members of nor subscribers to respondent Association, have cooperated with said respondent Association, said respondent Bureau and said Member and Subscriber respondents in many of the activities hereinafter set forth. Said respondents for convenience are hereinafter referred to as Non-affiliate respondents.

Paragraph Five: Respondent, Wallace E. Diford, is an individual who maintains his office in the Henry Building, Seattle, Washington. Said respondent was formerly employed as managing di-

rector of respondent Association and as such managing director initiated, supervised and carried out many of its policies, and has cooperated with said respondent Association, said respondent Bureau, said Member and Subscriber respondents and with said non-affiliate respondents in the hereinafter complained of activities.

Paragraph Six: The aforesaid Member, Subscriber and Non-affiliate respondents are engaged in the manufacture of and the sale and distribution of, or the sale and distribution [8] of plywood products to dealers therein located in states other than the state in which said respective respondents are located, causing said products, when so sold, to be transported from their respective places of business to the purchasers thereof located at various points in the several states of the United States other than the state of origin of such shipment and in the District of Columbia. There has been and now is a course of interstate trade and commerce in said products between the aforesaid respondents and dealers in said products located throughout the several states of the United States. Said Member respondents hereinbefore named in Paragraph Two, said Subscriber respondents hereinbefore named in Paragraph Three and said Non-affiliate respondents hereinbefore named in Paragraph Four are now, and have been during all of the times mentioned herein, engaged in competition with others in making and seeking to make sales of their said merchandise in said commerce and, but for the facts

hereinafter alleged, would now be in free, active and substantial competition with each other.

Paragraph Seven: Said Member, Subscriber, and Non-affiliate respondents, acting in cooperation with each other, and through and in cooperation with said respondent Association and its officers and management committee, and through and in cooperation with said respondent Bureau, and through and in cooperation with the respondent Wallace E. Difford, and each of them, during the period of time, to wit, from prior to January, 1936, to the date of this complaint, have engaged in an understanding, agreement, combination, conspiracy and planned common course of action among themselves and with and through said respondent Association and said respondent Bureau and said respondent Wallace E. Difford to restrict, restrain and suppress competition in the sale and distribution of plywood products to customers located throughout the several states of the United States and in the District of Columbia, as aforesaid, by agreeing to fix and maintain prices, terms and discounts at which said plywood products are to be sold, and to cooperate with each other in the enforcement and maintenance of said fixed prices, terms and discounts by exchanging information through said respondent Association and said respondent Bureau as to the prices, terms and discounts at which said Member, Subscriber, and Non-affiliate respondents have sold, and are offering to sell, said plywood products to customers and prospective customers.

Paragraph Eight: Pursuant to said understanding, agreement, combination, conspiracy and planned common course of [9] action, and in furtherance thereof, the said respondents have done and performed, and still do and perform, among others, the following acts and things:

(1) Agreed to and did curtail the production of plywood.

(2) Compiled statistical information in respect to production, sales, shipments, and orders on hand, which information was made available to respondents but which was denied to the purchasing trade.

(3) Adopted and used a uniform basic price list containing uniform net extras to be charged thereon and uniform discounts to be extended therefrom.

(4) Compiled and used lists of buyers entitled to receive a so-called jobbers' discount of 5%.

(5) Adopted and used a so-called functional compensation plan of distribution that included: (a) Issuance of uniform net dealers' prices carrying uniform prices on different quantities and a uniform cash discount; (b) Issuance of identically worded compensation schedules embodying definitions of trade factors and providing for the functional discount under prescribed conditions as to who may receive and under what conditions same may be granted; and adopted an unpublished agreement interpreting the plan, which agreement provided that a buyer doing less than 40% of its

business at wholesale would be considered a dealer under the plan; (c) Establishment of an Information Bureau to develop information as to the trade status of buyers which applied the secret requirement of 40% wholesale in determining the status of buyers under the plan which transmitted to Member respondents and Subscriber respondents conclusions and findings as to the status of buyers.

(6) Adopted arbitrarily rules providing that the Government and certain industrial buyers would be required to pay dealers' prices and that certain specified classes of industrial buyers would receive a 5% discount from the dealers' price. [10]

(7) Acted to insure the success of the plan and to compel compliance therewith by holding meetings with distributors for the purpose of forcing or inducing adherence to the price and discount provisions; inviting distributors to submit information in reference to suspected deviations from the plan by manufacturers or others; acting through the respondent Association to conduct general investigations of the Members' files or to investigate specific instances of reported violations; establishing the respondent Association as an intermediary to place business among the Member respondents; using mill numbers to identify the source of manufacture in cases of reported deviation from the plan; providing in the agreement licensing manufacturers to use the trade-marks obtained by the respondent Association that same could be used only on grades approved by the respondent Association.

(8) Threatened, sought to, and did, cut off the supply of distributors who failed or refused to adhere to prices or classification provisions.

(9) Quoted only on a delivered price basis and in conjunction therewith computed the rail freight from Tacoma, Washington, irrespective of the origin of shipment or the rate applicable thereto; and used a uniform schedule of estimated weights which were higher than actual weights and which, when used in connection with a fixed base price and a single basing point, assured the industry of uniform delivered price quotations to buyers.

(10) Shipped by water to East Coast and Gulf points only on a C.I.F. basis.

(1) Applied a uniform net addition to the ocean freight rate on water shipments and a uniform net addition on sales made in the primary market.

Paragraph Nine: The capacity, tendency and results of said understanding, agreement, combination, conspiracy, and planned common course of action and the acts and things done [11] thereunder and pursuant thereto by said respondents as hereinbefore set forth have been and now are:

(a) To interfere with and curtail the production of plywood products and the sale of same in interstate commerce to dealers therein who, but for the existence of said understanding, agreement, combination, conspiracy and planned common course of action, would be able to purchase their

requirements of said products from the manufacturers thereof.

(b) To force many dealers in plywood products to discontinue the sale of said products because of their inability to obtain them from manufacturers or to maintain a supply thereof at reasonable prices.

(c) To substantially increase the price of said plywood products to wholesalers, retailers and to the consuming public.

(d) To substantially increase the price of said products when sold to the Government and to certain industrial buyers who but for the understanding, agreement, combination, conspiracy, and planned common course of action would be able to secure their requirements of said plywood products at substantially lower prices; and,

(e) To concentrate in the hands of the respondents the power to dominate and control the business policies and practices of the manufacturers and distributors of plywood products, and the power to exclude from the industry those manufacturers and distributors who do not conform to the rules, regulations, and requirements established by said respondents, and thus to create a monopoly in said Member, Subscriber and Non-affiliate respondents named in Paragraphs Two, Three and Four hereof in the sale of said plywood products.

Paragraph Ten: The acts and practices of said respondents as herein alleged, are all to the prejudice of competitors of said respondents and of the public; have a dangerous tendency to and have ac-

tually hindered and prevented competition in the sale of plywood products in Commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act; have unreasonably restrained such commerce in plywood products and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act. [12]

Wherefore, the Premises Considered, the Federal Trade Commission on this 1st day of March, A.D. 1948, issues its complaint against said respondents.

Notice

Notice is hereby given you, Douglas Fir Plywood Association; and Herman Tenzler, Charles E. Devlin, and Harrison Clark, all individually, and as officers of the Douglas Fir Plywood Association; and E. W. Daniels, R. E. Seeley, N. O. Cruver, Arnold Koutonen, H. E. Tenzler, Frost Snyder, B. V. Hancock, T. B. Malarkey, and C. E. Devlin, all individually, and as members of the management committee of the Douglas Fir Plywood Association; and Douglas Fir Plywood Information Bureau, a voluntary organization; and Associated Plywood Mills, Inc., Buffelen Lumber & Manufacturing Company, a corporation, Coos Bay Lumber Company, a corporation, Elliott Bay Mill Company, a corporation, Eugene Plywood Company, a corporation, Harbor Plywood Corporation, M & M Woodworking Company, a corporation, Northwest Door Company, a corporation; Olympia Veneer Company, a corporation, Oregon-Washington Plywood Com-

pany, a corporation, Pacific Plywood Corporation, United States Plywood Corporation, Vancouver Plywood & Veneer Company, a corporation, Washington Veneer Company, a corporation, West Coast Plywood Company, a corporation, and The Wheeler, Osgood Company, all individually and as members of the Douglas Fir Plywood Association; and Aberdeen Plywood Corporation, Anacortes Veneer, Inc., Bellingham Plywood Corporation, Cascades Plywood Corporation, Nicolai Plywood Company, a corporation, Olympic Plywood Company, a corporation, Oregon Plywood Company, a corporation, Peninsula Plywood Corporation, Puget Sound Plywood, Inc., Robinson Manufacturing Company, a corporation, St. Paul & Tacoma Lumber Company, a corporation, Simpson Logging Company, a corporation, Simpson Industries, Eslye Q. Walton and E. D. Walton, partners trading as Walton Plywood Company, Western Door & Plywood Corporation, and Springfield Plywood Corporation, all individually, and as subscribers to the Douglas Fir Plywood Corporation; and Pacific Mutual Door Company, a corporation, Smith-Wood Products, Inc., Weyerhaeuser Timber Company, a corporation, and Wallace E. Difford, respondents herein, that the 9th day of April, A.D. 1948, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, [13] at which time and place you will have the right, under said Act, to appear and show cause why an order should

not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule VIII) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may

consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Such answer will constitute a waiver of any hearing as to the facts alleged in the complaint and the Commission may proceed to make its findings as to the facts and conclusions based upon such answer and enter its [14] order disposing of the matter without any intervening procedure. The respondent may, however, reserve in such answer the right to other intervening procedure, including a hearing upon proposed conclusions of fact or law, in which event he may in accordance with Rule XXIV file his brief directed solely to the questions reserved.

Upon request made within fifteen (15) days after service of the complaint, any party shall be afforded opportunity for the submission of facts, arguments, offers of settlement or proposals of adjustment where time, the nature of the proceeding and the public interest permit, and due consideration shall be given to the same. Such submission shall be in writing. The filing of such request shall not operate to delay the filing of the answer.

In Witness Whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D. C., this 1st day of March, A.D. 1948.

By the Commission.

[Seal] /s/ WM. P. GLENDENING, JR.,
Acting Secretary. [15]

United States of America
Before Federal Trade Commission

[Title of Cause.]

ANSWER OF RESPONDENT
NORTHWEST DOOR COMPANY

Comes now Northwest Door Company, a corporation, one of the respondents above named, and answering the complaint of the plaintiff herein, admits, denies and alleges as follows:

Paragraph One: This respondent admits that Douglas Fir Plywood Association is a non-profit organization, organized under the laws of the State of Washington for the purpose of promoting the sale and distribution of fir plywood but denies each and every other allegation contained therein.

Paragraph Two: This respondent believes that all of the companies named in this paragraph are corporations and are members of the Plywood Association but refers the Commission to the separate answer of each of said respondents so named for a true statement of facts.

Paragraph Three: This respondent admits that all of the parties named in Paragraph Three of the complaint are [66] engaged in the manufacture and distribution of Douglas Fir plywood but refers the Commission to the specific answer of each of said respondents for the true facts thereof.

Paragraph Four: This respondent believes the statements made in Paragraph Four are correct but refers the Commission to the answer of each of the parties named therein for a statement of the true facts.

Paragraph Five: This respondent admits that Wallace E. Difford as an individual maintains an office in Seattle, Washington, but denies each and every other allegation in said paragraph.

Paragraph Six: This respondent admits that it is engaged in the manufacture and sale and distribution of plywood products to dealers located in States other than the State of Washington, which is its principal location of its business, and states that it is not sufficiently informed as to the actions of the other respondents mentioned in said complaint, and, therefore, denies each and every other allegation contained in Paragraph Six.

Paragraph Seven: This respondent denies that it has an understanding, agreement, combination, conspiracy and planned common course of action with any other of the persons, firms or corporations named in said complaint or [67] any other party whatsoever with respect to the sale and distribution of plywood products or any other product in interstate commerce.

This respondent further denies that it has any agreement, express or implied, with any other person, firm or corporation by which it has agreed to fix and maintain prices, terms and discounts at which plywood products are sold in interstate commerce or otherwise, or any agreement to cooperate with any other respondent or any other person, firm or corporation in the enforcement or maintenance of said prices, terms, discounts or any other matter whatsoever.

Paragraph Eight: This respondent denies that it has acted in pursuance to any understanding,

agreement, combination, conspiracy and planned common course of action with any other respondent or any other person, firm or corporation relative to the sale of and distribution, or the distribution of plywood products or any other product.

(1) Respondent denies each and every allegation thereof.

(2) Respondent admits that it furnished certain data relative to production, sales, shipments and orders on hand to the Plywood Association but denies each and every other allegation contained therein and particularly denies [68]

(3) Respondent denies each and every allegation contained in this sub-paragraph and alleges that it determines its own price at which it will sell its product without relation to any other person, firm or corporation.

(4) Denies that it compiled and used a list of buyers designated "jobbers" and alleges the fact to be that the government agency known as the "NRA" was responsible for creating any "jobber list" or other list of dealers or setting any "discount rate" at which respondent's products could be sold, and further alleges that said practice was ratified, approved and promulgated and required by the Office of Price Administration.

(5) This respondent denies each and every allegation contained therein and further alleges the facts to be that if there is any uniform net dealers' prices carrying uniform prices on different quan-

tities and a uniform cash discount or any other schedules embodying definitions, etc., that this respondent is not apprised of it and does not use the same. [69]

(6) This respondent denies each and every allegation contained in this sub-paragraph and alleges that the only established "dealers' prices" or "industrial buyers' prices" are those established by the "NRA" under direction of the Federal Government and that after the discontinuance of the NRA this respondent sold its products at the prices established by it alone without relation to any other person, firm or corporation engaged in the manufacture or sale of plywood or other forest products.

(7) This respondent denies each and every allegation contained in this sub-paragraph.

(8) This respondent denies each and every allegation contained in this sub-paragraph.

(9) Respondent denies each and every allegation contained in this sub-paragraph and further alleges that the only plant owned or operated by this respondent is located in Tacoma, Washington, and that its freight rates are all based on shipments originating in Tacoma, Washington, and at no other place. That it has always sold and still sells on a basis of f.o.b. mill plus freight to the point of delivery.

(10) Denies each and every allegation contained in this sub-paragraph and alleges the facts to be that this respondent has not shipped any of its products to the East [70] Coast of the United

States or to the Gulf of Mexico by water in more than three years from the date said complaint was filed.

(11) Denies each and every allegation contained in this sub-paragraph.

Paragraph Nine: This respondent specifically denies that any act of itself or any agreement which it has with any person, firm or corporation has any tendency or results in any kind of agreement, combination, conspiracy or planned common course of action with any other of the respondents named in said complaint, or any other person, firm or corporation engaged in the manufacture of plywood or of any other forest product or any other product whatsoever and specifically denies each and every conclusion, allegation or inference contained in subparagraphs (a), (b), (c), (d) and (e) of said Paragraph Nine.

Paragraph Ten: Denies each and every allegation contained in Paragraph Ten.

Wherefore, this respondent, Northwest Door Company, having answered the complaint of the Commission herein, prays that the same may be dismissed forthwith and that [71] it have such other and further relief as may seem proper.

/s/ E. N. EISENHOWER,

/s/ CHAS. D. HUNTER, JR.,

/s/ JAMES V. RAMSDELL,

Attorneys for Respondent

Northwest Door Company.

United States of America
Before Federal Trade Commission

[Title of Cause.]

ANSWER

Comes now The Wheeler, Osgood Co., a corporation named in this proceeding as The Wheeler, Osgood Company, a corporation, and answers the Complaint of the Federal Trade Commission as follows:

Paragraph One: Answering Paragraph One of the Complaint, this respondent admits the facts alleged therein, except that it denies that the Douglas Fir Plywood Association was organized for the declared purposes set out in said Paragraph One, and in that connection this respondent refers to the separate Answer of said respondent, Douglas Fir Plywood Association, for particulars as to its declared purposes. This respondent further denies that the individuals named in Paragraph One are presently the officers of respondent, Douglas Fir Plywood Association as alleged in the Complaint.

Paragraph Two: Answering paragraph Two of the Complaint this respondent admits that it is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at 1216 St. Paul Avenue, Tacoma 1, Washington, but alleges that its true name is The Wheeler, Osgood Co. Because of lack of sufficient knowledge or information to form a belief as to the truth or falsity of the other allega-

tions contained in said Paragraph Two, this respondent denies the same.

Paragraph Three: Answering Paragraph Three of the Complaint this respondent does not have sufficient knowledge or information to form a belief as to the truth or falsity of the allegations therein contained and therefore denies the same.

Paragraph Four: Answering Paragraph Four of the Complaint this respondent is without sufficient knowledge or information to form a belief as to the truth or falsity of [73] said allegations and therefore denies the same.

Paragraph Five: Answering Paragraph Five of said Complaint, this respondent admits that Wallace E. Difford is an individual who maintains his office in the Henry Building, Seattle, Washington, and that he was formerly employed as Managing Director of the respondent Association and as such Managing Director initiated, supervised and carried out many of its policies, but this respondent denies that the said Wallace E. Difford cooperated with the said respondent Association, said respondent Bureau, this respondent, or any of them, in the activities complained of in the Complaint.

Paragraph Six: Answering Paragraph Six, this respondent admits the allegations contained in said paragraph, with the exception of the allegation and the implication of said allegation set out in said paragraph as follows: "but for the facts hereinafter alleged, would now be in free, active and substantial competition with each other.", and in that connection this respondent denies that it is not now in

free, active and substantial competition with all of the respondents mentioned in Paragraphs Two, Three and Four of said Complaint.

Paragraph Seven: Answering Paragraph Seven of said Complaint, this respondent denies each and every allegation therein contained.

Paragraph Eight: Answering Paragraph Eight of the Complaint this respondent denies each and every allegation therein contained.

Paragraph Nine: Answering Paragraph Nine of said Complaint this respondent denies each and every allegation therein contained.

Paragraph Ten: Answering Paragraph Ten of said Complaint this respondent denies each and every allegation therein contained.

Paragraph Eleven: For an Affirmative Defense, this respondent alleges that if any of the matters, facts and things alleged in the Complaint constitute a violation of Section 5 of the Federal Trade Commission Act, they have long since ceased and been abandoned, and there is no intention to resume the same.

Paragraph Twelve: For a Second Affirmative Defense, this respondent alleges that the cause of action, if any [74] there may be, arising on account of or by reason of the allegations in said Complaint, did not accrue within Three (3) years before this Complaint was filed.

Wherefore, having fully answered the Complaint of the said Federal Trade Commission, this respondent prays that the same be dismissed, and

that it have whatever other relief that may properly be afforded it under law.

Dated at Tacoma, Washington this 20th day of April, 1948.

THE WHEELER, OSGOOD CO.

By /s/ LEO A. McGAVICK,
Of the Law Firm of Scott,
Langhorne & McGavick.

Received April 27, 1948.

United States of America Before Federal Trade
Commission

[Title of Cause.]

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Douglas Fir Plywood Association, Harrison Clark, individually and as Assistant Secretary of Douglas Fir Plywood Association, and the members of and the subscribers to the Douglas Fir Plywood Association; the Douglas Fir Plywood Information Bureau, a voluntary organization; Robinson Plywood and Timber Company, a corporation; Pacific Mutual Door Company, a corporation; [188] Weyerhaeuser Sales Company, a corporation; and Wallace E. Difford, an individual, hereinafter referred to as respond-

ents, have violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

Paragraph One: (1) The respondent, Douglas Fir Plywood Association, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located in the Tacoma Building, Tacoma 2, Washington. The Association is composed of a number of individuals, partnerships, and corporations who are located principally in the States of Washington and Oregon, and who are engaged in the operation of mills for the manufacture of various plywood products, and the sale and distribution of said products when so manufactured, or in the sale and distribution of plywood products.

(2) The said respondent, the Douglas Fir Plywood Association, hereinafter referred to as respondent Association, was formed as a voluntary organization in about 1933, and served as the Code Authority for the industry during the period of the NRA. After the NRA was held unconstitutional, the voluntary Association continued as a trade organization, and in the latter part of 1936 it was organized as a nonprofit corporation under the laws of the State of Washington for the declared purposes, among others, of dealing with common industry problems of management such as those involved in the production, distribution, em-

ployment and financial functions of the plywood industry, and to secure cooperative action in advancing the common purposes of its members, to foster equity in business usages, and to promote activities aimed to enable the industry to conduct itself with the greatest economy and efficiency.

(3) The names and addresses of the present officers of said respondent Association are: Arnold Koutonen, President, c/o St. Paul & Tacoma Lumber Company, 1220 St. Paul Avenue, Tacoma 2, Washington; J. W. Forrester, Vice President, c/o Coos Bay Lumber Company, Coos Bay, Oregon; Leonard Nystrom, Secretary, c/o Associated Plywood Mills, Inc., 2nd and Garfield Streets, Eugene, Oregon; J. H. Smith, Treasurer, c/o Puget Sound Plywood, Inc., Tacoma, Washington; and Harrison Clark, Assistant Secretary and Assistant Manager, c/o Douglas Fir Plywood Association, Tacoma Building, Tacoma 2, Washington. The said Harrison Clark is named as a respondent herein in his individual capacity and as Assistant Secretary of said Douglas Fir Plywood Association. [189]

4. The names and addresses of the present members of the management committee of said respondent Association are: E. W. Daniels, Chairman, c/o Harbor Plywood Corporation; Hoquiam, Washington; Frost Snyder, c/o Vancouver Plywood & Veneer Company, Vancouver, Washington; R. E. Seeley, c/o Simpson Logging Company, Shelton, Washington; N. O. Cruver, c/o The Wheeler, Osgood Co., 1216 St. Paul Street, Tacoma 1, Wash-

ington; Herman Tenzler, c/o Northwest Door Company, 1203 East D Street, Tacoma 1, Washington; Arnold Koutonen, c/o St. Paul & Tacoma Lumber Company, 1220 St. Paul Avenue, Tacoma 2, Washington; B. V. Hancock, c/o Cascades Plywood Corporation, 1008 Public Service Building, Portland 4, Oregon; T. B. Malarkey, c/o M & M Woodworking Company, 2301 North Columbia Road, Portland 3, Oregon; Victor Olson, c/o Washington Veneer Company, Bellingham, Washington; J. W. Forrester, c/o Coos Bay Lumber Company, Coos Bay, Oregon; Charles E. Devlin, c/o Douglas Fir Plywood Association, Tacoma Building, Tacoma, Washington.

(5) Respondent, Douglas Fir Plywood Information Bureau, hereinafter referred to as respondent Bureau, is a voluntary organization whose address is Post Office Box 1224, Tacoma, Washington. Respondent Bureau maintains an office in the Rust Building, Tacoma 2, Washington, and was established, as declared by said respondent Bureau, for purposes of the Robinson-Patman Act. It functions to handle the transmittal of forms to applicants for classification, to assemble the data submitted by applicants, and to make recommendations to the member mills as to the classification of individual accounts. Respondent Bureau is operated as an activity of member and subscriber respondents and is advised by counsel for the respondent Association, and respondent Bureau is financed by the diversion of money paid by sub-

scribers to the respondent Association pursuant to their said contracts with the said respondent Association.

Paragraph Two: (1) Respondent, Associated Plywood Mills, Inc., is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business at 2nd and Garfield Streets, Eugene, Oregon. It maintains plants at Eugene and Williamina, Oregon. Said respondent is now, and has been since January 6, 1938, a subscriber to said respondent Association, and is now, and has been since approximately 1940, a member of said respondent Association. [190]

(2) Respondent, Buffelen Manufacturing Co., is a corporation which was organized under the laws of the State of California on the 20th day of February, 1948, and has its principal place of business at Tacoma, Washington. Said respondent, Buffelen Manufacturing Co., is the successor in title to Buffelen Lumber & Manufacturing Company, a Washington corporation. The said Buffelen Lumber & Manufacturing Company, a Washington corporation, was named as a respondent in the original complaint herein issued under date of March 1, 1948. Said Buffelen Lumber & Manufacturing Company became a member of said respondent Association prior to 1938, and became a subscriber to said respondent Association on June 11, 1938, and continued to be a member of and subscriber to said respondent Association throughout the remainder

of the time said corporation was in existence. During the period of its existence said Buffelen Lumber & Manufacturing Company was engaged in the manufacture, sale and distribution in commerce of plywood products. Just prior to June, 1948, and subsequent to the date of the original complaint herein, all of the stockholders of said Buffelen Lumber & Manufacturing Company sold all of their stock in said Buffelen Lumber & Manufacturing Company to, and transferred same to, respondent Buffelen Manufacturing Co., which said corporation is a California corporation, the majority of whose stockholders were and are citizens or residents of California. On June 30, 1948, the Tacoma branch of the Bank of California was appointed liquidating trustees of Buffelen Lumber & Manufacturing Company, the Washington corporation, and immediately distributed all of its assets to respondent Buffelen Manufacturing Co., and Buffelen Lumber & Manufacturing Company, the Washington corporation, was dissolved. Since said date respondent, Buffelen Manufacturing Co., has been the owner of and has been and now is operating the same plant and business formerly operated by Buffelen Lumber & Manufacturing Company, and at the same location, and since said date has at all times been, and still is, a member and subscriber to said respondent Association. The stockholders owning a majority of the stock in Buffelen Manufacturing Co., the California corporation, owned no stock in Buffelen Lumber & Manufacturing Company, the Washing-

ton corporation, and had no connection whatever with the old company.

(3) Respondent, Elliott Bay Mill Company, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at 600 West Spokane Street, Seattle, Washington. Said respondent is now, and since December 31, 1937, has [191] been, a subscriber to said respondent Association, and is now, and since prior to 1938 has been, a member of said respondent Association.

(4) Respondent, Harbor Plywood Corporation, is a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business located at Hoquiam, Washington. Said respondent is now, and since January 10, 1938, has been, a subscriber to said respondent Association, and is now, and has been since prior to 1938, a member of said respondent Association.

(5) Respondent, M & M Woodworking Company, is a corporation organized and existing under the laws of the State of Oregon with its principal office and place of business located at 2301 North Columbia Road, Portland 3, Oregon. Said respondent maintains plants located at Longview, Washington, and Albany and Portland, Oregon. Said respondent is now, and has been since December 30, 1937, a subscriber to said respondent Association, and is now, and has been since prior to 1938, a member of said respondent Association.

(6) Respondent, Northwest Door Company, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at 1203 East D Street, Tacoma 1, Washington. Said respondent is now, and since May 28, 1938, has been, a subscriber to said respondent Association, and is now, and has been since prior to 1938, a member of said respondent Association.

(7) Respondent, Oregon-Washington Plywood Company, is a corporation organized and existing under the laws of the State of Oregon with its principal office and place of business located at 1549 Dock Street, Tacoma 2, Washington. Said respondent is now, and since December 30, 1937, has been, a subscriber to said respondent Association, and is now, and since prior to 1938 has been, a member of said respondent Association.

(8) Respondent, United States Plywood Corporation, is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 55 West 44th Street, New York 18, New York. Said respondent maintains a plant located at Seattle, Washington. Said respondent is now, and since January 13, 1938, has been, a subscriber to said respondent Association, and is now, and since prior to 1938 has been, a member of said respondent Association.

(9) Respondent, Vancouver Plywood & Veneer Company, is a corporation organized and existing

under the laws of the State of Washington, with its principal office and place of [192] business located at Vancouver, Washington. Said respondent is now, and since December 30, 1937, has been, a subscriber to said respondent Association, and is now, and since prior to 1938 has been, a member of said respondent Association.

(10) Respondent, Washington Veneer Company, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at Olympia, Washington. Said respondent is now, and since December 30, 1937, has been, a subscriber to said respondent Association, and is now, and since prior to 1938 has been, a member of said respondent Association.

(11) Respondent, West Coast Plywood Company, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at Aberdeen, Washington. Said respondent is now, and since January 2, 1938, has been, a subscriber to said respondent Association, and is now, and has been since prior to 1938, a member of said respondent Association.

(12) Respondent, The Wheeler, Osgood Co., is a corporation incorporated on March 1, 1903, and existing under the laws of the State of Washington, with its principal office and place of business located at 1216 St. Paul Street, Tacoma 1, Washington.

On September 1, 1932, said respondent had a large outstanding indebtedness consisting of both bank loans and bonded indebtedness. Due to large operating losses beginning in the year 1930, The Wheeler, Osgood Co. defaulted in the payment of interest due on September 1, 1932, on its bonded indebtedness. As of December, 1932, all sales offices of The Wheeler, Osgood Co. had been closed, the company had withdrawn from active solicitation of business, all major plant activities had ceased, and its affairs were being directed by a committee representing the bondholders and creditors of said company.

On September 8, 1933, respondent, The Wheeler, Osgood Co., caused to be incorporated under the laws of the State of Washington a new corporation under the name of Wheeler Osgood Sales Corporation, which said corporation was, throughout its existence, a wholly-owned subsidiary of respondent, The Wheeler, Osgood Co. The Wheeler, Osgood Co. subscribed to all of the capital stock of Wheeler Osgood Sales Corporation and paid for same by transferring and conveying to Wheeler Osgood Sales Corporation all of its [193] inventory and other assets which were not covered by a deed of trust dated March 1, 1926. Wheeler Osgood Sales Corporation leased, on a month-to-month basis, from The Wheeler, Osgood Co., all of the plant and other property of The Wheeler, Osgood Co. covered by the deed of trust, the lease being dated September 15, 1933, and all net profits of Wheeler Osgood Sales Corporation were paid to The Wheeler, Os-

good Co. as rent for the property so leased. On the same day Wheeler Osgood Sales Corporation employed N. O. Cruver, who had been with The Wheeler, Osgood Co. for many years, and E. J. Calloway and Ralph Brindley, both also employees of The Wheeler, Osgood Co., as its principal executive officers. Wheeler Osgood Sales Corporation operated the plant of The Wheeler, Osgood Co. and all of the Business formerly operated by The Wheeler, Osgood Co. from September 15, 1933, until June 30, 1944.

Wheeler Osgood Sales Corporation became a member of respondent Association prior to 1938, and it became a subscriber to said respondent Association December 31, 1937, and during all of the time the business and plant of The Wheeler, Osgood Co. was operated and conducted by Wheeler Osgood Sales Corporation, Wheeler Osgood Sales Corporation remained a member of and subscriber to said respondent Association. During the period of time from September 15, 1933, to June 30, 1944, respondent, The Wheeler, Osgood Co., remained dormant and inactive and was engaged in the conduct under its own name of no business operations.

In December, 1937, a plan for the reorganization of respondent, The Wheeler, Osgood Co., under Section 77-B of the Bankruptcy Act, was submitted, and said plan of reorganization was approved by the Court in 1938. The business which had been conducted by its wholly-owned subsidiary, Wheeler Osgood Sales Corporation, from September 15, 1933, to June 30, 1944, was turned back to respondent,

The Wheeler, Osgood Co., and the wholly-owned subsidiary, Wheeler Osgood Sales Corporation, was dissolved by resolution filed on July 8, 1944, in the office of the Secretary of State of the State of Washington.

Since July 1, 1944, the said business which had been operated by Wheeler Osgood Sales Corporation since September 15, 1933, and which prior to that time had been conducted and operated by respondent, The Wheeler, Osgood Co., has been and now is operated by respondent, The Wheeler, Osgood Co., and said respondent during all of the time since July 1, 1944, has been and now is a member of and a subscriber to said respondent Association. [194A]

(13) Respondent, Anacortes Veneer, Inc., is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located at Anacortes, Washington. Said respondent began operations November 23, 1939. On December 4, 1939, said respondent became a subscriber to said respondent Association, and on December 5, 1939, said respondent issued Dealer Price List No. 39-B, containing identical prices, terms, and conditions as shown in Dealer Price List No. 39-B issued by other members of and subscribers to respondent Association. Said respondent also issued on December 5, 1939, and effective on that date, in connection with its Dealer Price List No. 39-B, a Wholesale Functional Service Compensation Schedule identical in form, lan-

guage, terms, conditions and provisions with Wholesale Functional Service Compensation Schedules issued and used by all other members of and subscribers to said respondent Association, and in connection with the use thereof said respondent made use of the services of respondent Douglas Fir Plywood Information Bureau. Said respondent has been since December 4, 1939, and now is, a subscriber to said respondent Association, and has been since June, 1947, and now is, a member of said respondent Association.

(14) All of said respondents hereinbefore named in Paragraph Two are hereinafter, for the sake of brevity, referred to as Member and Subscriber respondents.

(15) Those respondents herein designated as subscribers to the respondent Association were signers of a contract with said Association entitled "Subscription Contract—Cooperative Trade Promotion Campaign." All members of said Association were signers of said contract but not all signers of said contract were members of said Association. Under the terms of said contract the signer agreed to pay 35c per M square feet of plywood production to be expended for trade promotion purposes by the Association under the direction of the management committee set up in the contract. Subscribers voted for members of the management committee and were entitled to serve thereon. They did not vote for officers of the Association if they were not also members of said Association. All

subscribers were licensed by the Association to use trade-marks or trade names owned by the Association in accordance with the provisions of the license agreements.

Paragraph Three: Respondent, Robinson Plywood and Timber Company, before change of its corporate name, was known as Robinson Manufacturing Company, and was so designated in the original complaint issued herein on March 1, 1948. It is a [194B] corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Everett, Washington. Said respondent, under its former corporate name, was a subscriber to respondent Association until December 31, 1946.

Paragraph Four: (1) Respondent, Pacific Mutual Door Company, is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located in the Tacoma Building, Tacoma, Washington.

(2) Respondent, Weyerhaeuser Sales Company, is a corporation organized and existing under the laws of the State of Washington with its principal office and place of business located in the Tacoma Building, Tacoma, Washington. Said respondent maintains its general executive offices in St. Paul, Minnesota.

(3) The said respondents, hereinbefore mentioned in Paragraph Four, are engaged in the distribution of plywood products. Said respondents,

while neither members of nor subscribers to respondent Association, have cooperated with said respondent Association, said respondent Bureau, and said Member and Subscriber respondents named in Paragraph Two hereof, and with respondent, Robinson Plywood and Timber Company, named in Paragraph Three hereof, in many of the activities hereinafter set forth. Said respondents, for convenience, are hereinafter referred to as Non-affiliate respondents.

Paragraph Five: Respondent, Wallace E. Difford, is an individual who maintains his office in the Henry Building, Seattle, Washington. Said respondent was from March 8, 1938, to June 30, 1946, employed as managing director of respondent Association, and as such mangaging director initiated, supervised and carried out many of its policies, and has cooperated with said respondent Association, said respondent Bureau, said Member and Subscriber respondents, said respondent, Robinson Plywood and Timber Company, and with said Non-affiliate respondents in the hereinafter complained of activities. Said respondent Difford severed his employment with respondent Association as of June 30, 1946, and is presently engaged in the distribution of lumber products under the name of W. E. Difford & Sons.

Paragraph Six: The aforesaid Member and Subscriber respondents named in Paragraph Two, the respondent, Robinson Plywood and Timber Company, named in Paragraph Three, and the Non-

affiliate respondents, named in Paragraph Four, are engaged in the manufacture, sale and [195] distribution of, or the sale and distribution of, plywood products to dealers therein located in states other than the state in which said respondents are located, causing said products, when so sold, to be transported from their respective places of business to the purchasers thereof located at various points in the several states of the United States other than the state of origin of such shipment and in the District of Columbia. There has been and now is a course of interstate trade and commerce in said products between the aforesaid respondents and dealers in said products located throughout the several states of the United States. Said Member and Subscriber respondents, hereinbefore named in Paragraph Two, said respondent Robinson Plywood and Timber Company, hereinbefore named in Paragraph Three, and said Non-affiliate respondents, hereinbefore named in Paragraph Four, are now, and have been during all of the times mentioned herein, engaged in competition with others in making and seeking to make sales of their said merchandise in said commerce, and, but for the facts hereinafter alleged, would now be in free, active, and substantial competition with each other.

Paragraph Seven: Said Member and Subscriber respondents, said Robinson Plywood and Timber Company, and said Non-affiliate respondents, acting in cooperation with each other, and through and in cooperation with said respondent Association and

its officers and management committee, and through and in cooperation with said respondent Bureau, and through and in cooperation with the respondents Wallace E. Difford and Harrison Clark, and each of them, during the period of time, to wit, for a substantial portion of the period of time since prior to January, 1936, have engaged in an understanding, agreement, combination, conspiracy and planned common course of action among themselves and with and through said respondent Association and said respondent Bureau, and said respondents Wallace E. Difford and Harrison Clark, to restrict, restrain, and suppress competition in the sale and distribution of plywood products to customers located throughout the several states of the United States and in the District of Columbia, as aforesaid, by agreeing to fix and maintain prices, terms and discounts at which said plywood products are to be sold, and to cooperate with each other in the enforcement and maintenance of said fixed prices, terms and discounts by exchanging information through said respondent Association and said respondent Bureau as to the prices, terms and discounts at which said Member and Subscriber, respondents, said respondent Robinson Plywood and Timber Company, and said Non-affiliate respondents have sold and are offering to sell, said plywood [196] products to customers and prospective customers.

Paragraph Eight: Pursuant to said understanding, agreement, combination, conspiracy and

planned common course of action, and in furtherance thereof, the said respondents have done and performed, and still do and perform, among others, the following acts and things:

(1) Agreed to and did curtail the production of plywood.

(2) Compiled statistical information in respect to production, sales, shipments, and orders on hand, which information was made available to respondents but which was denied to the purchasing trade.

(3) Adopted and used a uniform basic price list containing uniform net extras to be charged thereon and uniform discounts to be extended therefrom.

(4) Compiled and used lists of buyers entitled to receive a so-called jobbers' discount of 5%.

(5) Adopted and used a so-called functional compensation plan of distribution that included: (a) Issuance of uniform net dealers' prices carrying uniform prices on different quantities and a uniform cash discount; (b) Issuance of identically worded compensation schedules embodying definitions of trade factors, and providing for the functional discount under prescribed conditions as to who may receive and under what conditions same may be granted; and adopted an unpublished agreement interpreting the plan, which agreement provided that a buyer doing less than 40% of its business at wholesale would be considered a dealer under the plan; (c) Establishment of an Information Bureau to develop information as to the trade

status of buyers, which applied the secret requirement of 40% wholesale in determining the status of buyers under the plan and which transmitted to Member respondents and Subscriber respondents conclusions and findings as to the status of buyers.

(6) Adopted arbitrarily rules providing that the Government and certain industrial buyers would be required to pay dealers' prices, and that certain specified classes of industrial buyers would receive a 5% discount from the dealers' price.

(7) Acted to insure the success of the plan, and to compel compliance therewith, by holding meetings with distributors for the purpose of forcing or inducing adherence to the price and discount provisions; inviting distributors to submit information in reference to suspected deviations from the plan by manufacturers or others; acting through the respondent Association to conduct general investigations of the Members' files or to investigate specific instances [197] of reported violations; establishing the respondent Association as an intermediary to place business among the Member respondents; using mill numbers to identify the source of manufacture in cases of reported deviation from the plan; providing in the agreement licensing manufacturers to use the trade-marks obtained by the respondent Association that same could be used only on grades approved by the respondent Association.

(8) Threatened, sought to, and did, cut off the

supply of distributors who failed or refused to adhere to prices or classification provisions.

(9) Quoted only on a delivered price basis and in conjunction therewith computed the rail freight from Tacoma, Washington, irrespective of the origin of shipment or the rate applicable thereto; and used a uniform schedule of estimated weights which were higher than actual weights and which, when used in connection with a fixed base price and a single basing point, assured the industry of uniform delivered price quotations to buyers.

(10) Shipped by water to East Coast and Gulf points only on a C.I.F. basis.

(11) Applied a uniform net addition to the ocean freight rate on water shipments, and a uniform net addition on sales made in the primary market.

Paragraph Nine: The capacity, tendency and results of said understanding, agreement, combination, conspiracy, and planned common course of action and the acts and things done thereunder and pursuant thereto by said respondents, as hereinbefore set forth, have been and now are:

(a) To interfere with and curtail the production of plywood products and the sale of same in interstate commerce to dealers therein who, but for the existence of said understanding, agreement, combination, conspiracy and planned common course of action, would be able to purchase their requirements of said products from the manufacturers thereof.

(b) To force many dealers in plywood products to discontinue the sale of said products because of their inability to obtain them from manufacturers or to maintain a supply thereof at reasonable prices. [198].

(c) To substantially increase the price of said plywood products to wholesalers, retailers and to the consuming public.

(d) To substantially increase the price of said products when sold to the Government and to certain industrial buyers who, but for the understanding, agreement, combination, conspiracy, and planned common course of action, would be able to secure their requirements of said plywood products at substantially lower prices; and

(e) To concentrate in the hands of the respondents the power to dominate and control the business policies and practices of the manufacturers and distributors of plywood products, and the power to exclude from the industry those manufacturers and distributors who do not conform to the rules, regulations, and requirements established by said respondents, and thus to create a monopoly in said Member and Subscriber, former Subscriber, and Non-affiliate respondents named in Paragraphs Two, Three and Four hereof in the sale of said plywood products.

Paragraph Ten: The acts and practices of said respondents, as herein alleged, are all to the prejudice of competitors of said respondents and of the public; have a dangerous tendency to and have ac-

tually hindered and prevented competition in the sale of plywood products in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act; have unreasonably restrained such commerce in plywood products and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Wherefore, the Premises Considered, the Federal Trade Commission, on this 19th day of May, A.D. 1949, issues its amended complaint against said respondents.

Notice

Notice is hereby given you, Douglas Fir Plywood Association; Harrison Clark, individually and as Assistant Secretary of Douglas Fir Plywood Association; Douglas Fir Plywood Information Bureau, a voluntary organization; Associated Plywood Mills, Inc., Buffelen Manufacturing Co., a corporation, Elliott Bay Mill Company, a corporation, Harbor Plywood Corporation, M & M Woodworking Company, a [199] corporation, Northwest Door Company, a corporation, Oregon-Washington Plywood Company, a corporation, United States Plywood Corporation; Vancouver Plywood & Veneer Company, a corporation, Washington Veneer Company, a corporation; West Coast Plywood Company, a corporation, The Wheeler, Osgood Co., a corporation, and Anacortes Veneer, Inc., all individually and as members of and subscribers to respondent Douglas Fir Plywood Association;

Robinson Plywood and Timber Company, a corporation; Pacific Mutual Door Company, a corporation, Weyerhaeuser Sales Company, a corporation, and Wallace E. Difford, respondents herein, that the 1st day of July, A.D. 1949, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this amended complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the amended complaint.

You are notified and required, on or before the twentieth day after service upon you of this amended complaint, to file with the Commission an answer to the amended complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule VIII) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or

explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the [200] charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Such answer will constitute a waiver of any hearing as to the facts alleged in the complaint and the Commission may proceed to make its findings as to the facts and conclusions based upon such answer and enter its order disposing of the matter without any intervening procedure. The respondent may, however, reserve in such answer the right to other intervening procedure, including a hearing upon proposed conclusions of fact or law, in which event he may in accordance with Rule XXIV file his brief directed solely to the questions reserved.

Upon request made within fifteen (15) days after service of the amended complaint, any party shall

be afforded opportunity for the submission of facts, arguments, offers of settlement, or proposals of adjustment where time, the nature of the proceeding and the public interest permit, and due consideration shall be given to the same. Such submission shall be in writing. The filing of such request shall not operate to delay the filing of the answer.

In Witness Whereof, the Federal Trade Commission has caused this, its amended complaint, to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D. C., this 19th day of May, A.D. 1949.

By the Commission.

[Seal] /s/ D. C. DANIEL,
Secretary. [201]

United States of America,
Before Federal Trade Commission

[Title of Cause.]

ANSWER OF RESPONDENTS DOUGLAS FIR
PLYWOOD ASSOCIATION, AND DOUG-
LAS FIR PLYWOOD INFORMATION
BUREAU, A VOLUNTARY ORGANIZA-
TION, TO AMENDED COMPLAINT

In order to expedite this proceeding and to prevent the business disorganization consequent upon litigation, and expense incident to trial, respond-

ents Douglas Fir Plywood Association and Douglas Fir Plywood Information Bureau, a voluntary organization, come by their attorneys McMicken, Rupp & Schweppe and Alfred J. Schweppe, and answering the amended complaint in this proceeding, state that they admit all of the material allegations of fact set forth in said complaint, provided this admission be taken to mean that the understanding, agreement, combination, conspiracy and planned common course of action alleged in paragraph Seven of the amended complaint existed and continued only for a substantial part of the period of time charged in the amended complaint, to wit, for a substantial part of the period between May, 1935, to August 1, 1941, and not otherwise, and, except to the extent of such admission, deny all of the material allegations of fact set forth in the complaint, and waive all intervening procedure and further hearing as to the said facts.

Any and all admissions of fact made by respondents herein are made solely for the purpose of this proceeding, the enforcement or review thereof in the Circuit Court of Appeals, and for any review in the Supreme Court of the United States, or for any other proceeding in enforcement of the order to be entered herein, or to recover any penalty for violation thereof which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act as amended, and for no other purpose, but reserving the right of a hearing with oral argument and filing of briefs before the

Commission as to what order, if any, should be issued upon the facts hereby admitted.

Dated: June 8, 1949. [202]

McMICKEN, RUPP &
SCHWEPPE,

/s/ ALFRED J. SCHWEPPE,

Attorneys for Respondents Douglas Fir Plywood Association and Douglas Fir Plywood Information Bureau, a Voluntary Organization.

Received June 8, 1949. [203]

United States of America,
Before Federal Trade Commission

[Title of Cause.]

ANSWER OF RESPONDENT HARRISON
CLARK TO AMENDED COMPLAINT

In order to expedite this proceeding and to prevent the business disorganization consequent upon litigation, and expense incident to trial, respondent Harrison Clark, individually and as Assistant Secretary of Douglas Fir Plywood Association, comes by his attorneys McMicken, Rupp & Schweppe and Alfred J. Schweppe, and answering the amended complaint in this proceeding, states that he admits all of the material allegations of fact set forth in said complaint, provided this admission be taken to mean that the understanding, agreement, combination, conspiracy and planned common course of action alleged in paragraph Seven of the

amended complaint existed and continued only for a substantial part of the period of time charged in the amended complaint, to wit, for a substantial part of the period between May, 1935, to August 1, 1941, and not otherwise, and, except to the extent of such admission, denies all of the material allegations of fact set forth in the complaint, and waives all intervening procedure and further hearing as to the said facts.

Any and all admissions of fact made by respondent herein are made solely for the purpose of this proceeding, the enforcement or review thereof in the Circuit Court of Appeals, and for any review in the Supreme Court of the United States, or for any other proceeding in enforcement of the order to be entered herein, or to recover any penalty for violation thereof which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act as amended, and for no other purpose, but reserving the right of a hearing with oral argument and filing of briefs before the Commission as to what order, if any, should be issued upon the facts hereby admitted.

Dated: June 8, 1949.

McMICKEN, RUPP &
SCHWEPPE,

/s/ ALFRED J. SCHWEPPE,
Attorneys for Respondent
Harrison Clark.

Received June 8, 1949. [204]

United States of America,
Before Federal Trade Commission

[Title of Cause.]

ANSWER OF RESPONDENT ASSOCIATED
PLYWOOD MILLS, INC., TO AMENDED
COMPLAINT

In order to expedite this proceeding and to prevent the business disorganization consequent upon litigation, and expense incident to trial, respondent Associated Plywood Mills, Inc., comes by its attorneys McMicken, Rupp & Schweppe and Alfred J. Schweppe, and answering the amended complaint in this proceeding, states that it admits all of the material allegations of fact set forth in said complaint, provided this admission be taken to mean that the understanding, agreement, combination, conspiracy and planned common course of action alleged in paragraph Seven of the amended complaint existed and continued only for a substantial part of the period of time charged in the amended complaint, to wit, for a substantial part of the period between May, 1935, to August 1, 1941, and not otherwise, and, except to the extent of such admission, denies all of the material allegations of fact set forth in the complaint, and waives all intervening procedure and further hearing as to the said facts.

Any and all admissions of fact made by respondent herein are made solely for the purpose of this proceeding, the enforcement or review thereof in

the Circuit Court of Appeals, and for any review in the Supreme Court of the United States, or for any other proceeding in enforcement of the order to be entered herein, or to recover any penalty for violation thereof which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act as amended, and for no other purpose, but reserving the right of a hearing with oral argument and filing of briefs before the Commission as to what order, if any, should be issued upon the facts hereby admitted.

Dated: June 8, 1949.

McMICKEN, RUPP &
SCHWEPPE,

/s/ ALFRED J. SCHWEPPE,
Attorneys for Respondent, Associated Plywood
Mills, Inc.

Received June 8, 1949. [205]

United States of America,
Before Federal Trade Commission

[Title of Cause.]

ANSWER OF RESPONDENT ELLIOTT BAY
MILL COMPANY TO AMENDED COMPLAINT

In order to expedite this proceeding and to prevent the business disorganization consequent upon litigation and expense incident to trial, respondent

Elliott Bay Mill Company, comes by its attorneys McMicken, Rupp & Schweppe and Alfred J. Schweppe, and answering the amended complaint in this proceeding, states that it admits all of the material allegations of fact set forth in said complaint, provided this admission be taken to mean that the understanding, agreement, combination, conspiracy and planned common course of action alleged in paragraph Seven of the amended complaint existed and continued only for a substantial part of the period of time charged in the amended complaint, to wit, for a substantial part of the period between May, 1935, to August 1, 1941, and not otherwise, and, except to the extent of such admission, denies all of the material allegations of fact set forth in the complaint, and waives all intervening procedure and further hearing as to the said facts.

Any and all admissions of fact made by respondent herein are made solely for the purpose of this proceeding, the enforcement or review thereof in the Circuit Court of Appeals, and for any review in the Supreme Court of the United States, or for any other proceeding in enforcement of the order to be entered herein, or to recover any penalty for violation thereof which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act as amended, and for no other purpose, but reserving the right of a hearing with oral argument and filing of briefs before the Commission as to what order, if any,

should be issued upon the facts hereby admitted.

Dated: June 8, 1949.

McMICKEN, RUPP &
SCHWEPPE,

/s/ ALFRED J. SCHWEPPE,
Attorneys for Respondent
Elliott Bay Mill Company.

Received June 8, 1949. [208]

United States of America,
Before Federal Trade Commission

[Title of Cause.]

ANSWER OF RESPONDENT HARBOR PLY-
WOOD CORPORATION TO AMENDED
COMPLAINT

In order to expedite this proceeding and to prevent the business disorganization consequent upon litigation, and expense incident to trial, respondent Harbor Plywood Corporation comes by its attorneys, Alfred J. Schweppe and M. A. Marquis, and answering the amended complaint in this proceeding, states that it admits all of the material allegations of fact set forth in said complaint, provided this admission be taken to mean that the understanding, agreement, combination, conspiracy and planned common course of action alleged in para-

graph Seven of the amended complaint existed and continued only for a substantial part of the period of time charged in the amended complaint, to wit, for a substantial part of the period between May, 1935, to August 1, 1941, and not otherwise, and, except to the extent of such admission, denies all of the material allegations of fact set forth in the complaint, and waives all intervening procedure and further hearing as to the said facts.

Any and all admissions of fact made by respondent herein are made solely for the purpose of this proceeding, the enforcement or review thereof in the Circuit Court of Appeals, and for any review in the Supreme Court of the United States, or for any other proceeding in enforcement of the order to be entered herein, or to recover any penalty for violation thereof which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act as amended, and for no other purpose, but reserving the right of a hearing with oral argument and filing of briefs before the Commission as to what order, if any, should be issued upon the facts hereby admitted.

Dated: June 8, 1949.

/s/ ALFRED J. SCHWEPPE, [209]

/s/ M. A. MARQUIS,

Attorneys for Respondent Harbor Plywood Corporation.

Received June 8, 1949. [210]

United States of America,
Before Federal Trade Commission

[Title of Cause.]

ANSWER OF RESPONDENT M AND M
WOODWORKING COMPANY TO AMEND-
ED COMPLAINT

In order to expedite this proceeding and to prevent the business disorganization consequent upon litigation, and expense incident to trial, respondent, M and M Woodworking Company, an Oregon corporation, comes by its attorneys, Sabin and Malarkey, Robert L. Sabin and Howard H. Campbell, and answering the amended complaint in this proceeding, states that it admits all of the material allegations of fact set forth in said complaint, provided this admission be taken to mean that the understanding, agreement, combination, conspiracy and planned common course of action alleged in paragraph Seven of the amended complaint existed and continued only for a substantial part of the period of time charged in the amended complaint, to wit, for a substantial part of the period between May, 1935, to August 1, 1941, and not otherwise, and, except to the extent of such admission, denies all of the material allegations of fact set forth in the complaint, and waives all intervening procedure and further hearing as to the said facts.

Any and all admissions of fact made by respondent herein are made solely for the purpose of this

proceeding, the enforcement or review thereof in the Circuit Court of Appeals, and for any review in the Supreme Court of the United States, or for any other proceeding in enforcement of the order to be entered herein, or to recover any penalty for violation thereof which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act as amended, and for no other purpose, but reserving the right of a hearing with oral [211] argument and filing of briefs before the Commission as to what order, if any, should be issued upon the facts hereby admitted.

Dated: June 8, 1949.

SABIN AND MALARKEY,

/s/ ROBERT L. SABIN,

/s/ HOWARD H. CAMPBELL,

Attorneys for Respondent, M and M Woodworking
Company.

Received June 8, 1949. [212]

United States of America,
Before Federal Trade Commission

[Title of Cause.]

ANSWER OF RESPONDENT NORTHWEST
DOOR COMPANY TO AMENDED COM-
PLAINT

Comes now Northwest Door Company, one of the respondents above named, and answering the amended complaint herein, and in order to expedite this proceeding and to prevent the business disorganization consequent upon litigation and expense incident to trial, this answering respondent, Northwest Door Company, states:

That it admits that it cooperated in the activities set forth in Paragraph Seven and in sub-divisions (2), (3), (5a), (5b), part of (7), (9), (10) and (11) of Paragraph Eight of said amended complaint; Provided, this admission be taken to mean that the cooperation admitted hereinabove in this answer continued only for a substantial part of the period of time charged in the amended complaint, to wit, for a substantial part of the period of time from May, 1935, to August, 1941, and not otherwise; and except to [213] the extent of such admission, denies all of the material allegations of fact set forth in said amended complaint, and especially Paragraphs Seven and Eight thereof, and especially denies the allegations of sub-divisions (1), (4), that part of (5) which alleges that this respondent adopted an

unpublished agreement which provided that a buyer doing less than 40% of its business at wholesale would be considered a dealer; denies sub-divisions (6) and (8) and all that part of (7) alleging the Association to be this respondent's agent for the purpose of compelling compliance by distributors with some unpublished agreement with which this respondent was not a party, of Paragraph Eight of said amended complaint, and this answering respondent waives all intervening procedure and further hearing as to the facts.

Any and all admissions of fact made by respondent herein are made solely for the purpose of this proceeding, the enforcement or review thereof in the Circuit Court of Appeals, and for any review thereof in the Supreme Court of the United States, or for any other proceeding in enforcement of the order to be entered herein, or to recover any penalty for violation thereof which may be brought or instituted by virtue of the authority contained in the [214] Federal Trade Commission Act as amended, and for no other purpose, but reserving the right of a hearing with oral argument and filing of briefs before the Commission as to what order, if any, should be issued upon the facts hereby admitted; but this respondent agrees that any order entered by the Commission may prohibit as to said respondent any or all of the acts alleged by Para-

graphs Seven and Eight of the amended complaint to be illegal.

Dated: June 8, 1949.

NORTHWEST DOOR
COMPANY,

By /s/ H. E. TENZLER,
President,
Respondent.

/s/ E. N. EISENHOWER,
/s/ CHAS. D. HUNTER, JR.,
/s/ JAMES V. RAMSDALL,

Attorneys for Respondent Northwest Door Com-
pany.

Received June 8, 1949. [215]

United States of America
Before Federal Trade Commission

[Title of Cause.]

ANSWER OF RESPONDENT OREGON-WASH-
INGTON PLYWOOD COMPANY, A COR-
PORATION, TO AMENDED COMPLAINT

In order to expedite this proceeding and to prevent the business disorganization consequent upon litigation, and expense incident to trial, respondent Oregon-Washington Plywood Company comes by its attorney, George J. Perkins, and answering the amended complaint in this proceeding, states that it admits all of the material allegations of fact set forth in said amended complaint, except this re-

spondent denies that the understanding, agreement, combination, conspiracy and common course of action alleged in the amended complaint, or that any agreement or understanding between this respondent and any of the other respondents named in the amended complaint, to fix or control prices or [216] limit production of plywood or any commodities, continued or existed for any period or time subsequent to August 31, 1941.

This respondent waives all intervening procedure and further hearing as to said facts.

Any and all admissions of fact made by respondent herein are made solely for the purpose of this proceeding, the enforcement or review thereof in the Circuit Court of Appeals, and for any review in the Supreme Court of the United States, or for any other proceeding in enforcement of the order to be entered herein, or to recover any penalty for violation thereof which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act as Amended, and for no other purpose, but reserving the right of a hearing with oral argument and filing of briefs before the Commission as to what order, if any, should be issued upon the facts hereby admitted.

Dated: June 8, 1949.

Respectfully submitted,

/s/ GEORGE J. PERKINS,
Attorney for Respondent Oregon-Washington Ply-
wood Company.

Received June 8, 1949. [217]

United States of America
Before Federal Trade Commission

[Title of Cause.]

ANSWER OF RESPONDENT UNITED
STATES PLYWOOD CORPORATION TO
AMENDED COMPLAINT

In order to expedite this proceeding and to prevent the business disorganization consequent upon litigation, and expense incident to trial, respondent United States Plywood Corporation comes by Alfred J. Scheppe, of its attorneys, and answering the amended complaint in this proceeding states that it admits all of the material allegations of fact set forth in said complaint, provided this admission be taken to mean that the understanding, agreement, combination, conspiracy and planned common course of action alleged in paragraph Seven of the amended complaint existed and continued only for a substantial part of the period of time charged in the amended complaint, to wit, for a substantial part of the period between May, 1935, to August 1, 1941, and not otherwise, and, except to the extent of such admission, denies all of the material allegations of fact set forth in the complaint, and waives all intervening procedure and further hearing as to the said facts.

Any and all admissions of fact made by respondent herein are made solely for the purpose of this proceeding, the enforcement or review thereof in the Circuit Court of Appeals, and for any review

in the Supreme Court of the United States, or for any other proceeding in enforcement of the order to be entered herein, or to recover any penalty for violation thereof which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act as amended, and for no other purpose, but reserving the right of a hearing with oral argument and filing of briefs before the Commission as to what order, if any, should be issued upon the facts hereby admitted.

Dated: June 8, 1949.

/s/ ALFRED J. SCHWEPPE,
Of Attorneys for Respondent United States Ply-
wood Corporation.

Received June 8, 1949. [218]

United States of America
Before Federal Trade Commission

[Title of Cause.]

ANSWER OF RESPONDENT VANCOUVER
PLYWOOD & VENEER COMPANY, A COR-
PORATION, TO AMENDED COMPLAINT

In order to expedite this proceeding and to prevent the business disorganization consequent upon litigation and expense incident to trial, respondent Vancouver Plywood & Veneer Company, a corporation, comes by its attorneys McMicken, Rupp &

Schweppe and Alfred J. Schweppe, and answering the amended complaint in this proceeding, states that it admits all of the material allegations of fact set forth in said complaint, provided this admission be taken to mean that the understanding, agreement, combination, conspiracy and planned common course of action alleged in paragraph Seven of the amended complaint existed and continued only for a substantial part of the period of time charged in the amended complaint, to wit, for a substantial part of the period between May, 1935, to August 1, 1941, and not otherwise, and, except to the extent of such admission, denies all of the material allegations of fact set forth in the complaint, and waives all intervening procedure and further hearing as to the said facts.

Any and all admissions of fact made by respondent herein are made solely for the purpose of this proceeding, the enforcement or review thereof in the Circuit Court of Appeals, and for any review in the Supreme Court of the United States, or for any other proceeding in enforcement of the order to be entered herein, or to recover any penalty for violation thereof which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act as amended, and for no other purpose, but reserving the right of a hearing with oral argument and filing of briefs before the Commission as to what order, if any, should be issued upon the facts hereby admitted.

Dated: June 8, 1949.

McMICKEN, RUPP &
SCHWEPPE,

/s/ ALFRED J. SCHWEPPE,

Attorneys for Respondent Vancouver Plywood &
Veneer Company, a Corporation.

Received June 8, 1949. [219]

United States of America
Before Federal Trade Commission

[Title of Cause.]

ANSWER OF RESPONDENT WASHINGTON
VENEER COMPANY, A CORPORATION,
TO AMENDED COMPLAINT

Comes now Washington Veneer Company, a corporation, one of the respondents in the above captioned proceeding and for answer to the amended complaint, answers as follows:

In order to expedite this proceeding and to prevent the business disorganization consequent upon litigation, and expense incident to trial, respondent Washington Veneer Company, comes by its attorneys, W. E. Evenson, Willard E. Skeel and Alfred J. Schweppe, and answering the amended complaint in this proceeding, states that it admits all of the material allegations of fact set forth in said complaint, provided this admission be taken to mean that the understanding, agreement, combination, conspiracy and planned common course

of action alleged in paragraph Seven of the amended complaint existed and continued only for a substantial part of the period of time charged in the amended complaint, to wit, for a substantial part of the period between May, 1935, to August 1, 1941, and not otherwise, and, except to the extent of such admission, denies all of the material allegations of fact set forth in the amended complaint, and waives all intervening procedure and further hearing as to the said facts.

Any and all admissions of fact made by respondent herein are made solely for the purpose of this proceeding, the enforcement or review thereof in the Circuit Court of Appeals, and for any review in the Supreme Court of the United States, or for any other proceeding in enforcement of the order to be entered herein, or to recover any penalty for violation hereof which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act as amended, and for no other purpose, [220] but reserving the right of a hearing with oral argument and filing of briefs before the Commission as to what order, if any, should be issued upon the facts hereby admitted.

Dated this 8th day of June, 1949.

/s/ W. E. EVENSON,

/s/ WILLARD E. SKEEL,

Of Attorneys for Washington
Veneer Company.

/s/ ALFRED J. SCHWEPPE,

One of Attorneys for Respondent Washington
Veneer Company.

State of Washington,
County of King—ss.

I, Victor Olson, being first duly sworn, say that I am President of Washington Veneer Company, one of the respondents in the within-entitled cause, and the foregoing is true as I verily believe.

/s/ VICTOR OLSON.

Subscribed and sworn to before me this 28th day of April, 1949.

/s/ E. F. CAUNDAY,
Notary Public in and for the State of Washington,
Residing at Seattle.

Received June 8, 1949. [221]

United States of America
Before Federal Trade Commission

[Title of Cause.]

ANSWER OF WEST COAST PLYWOOD
COMPANY TO AMENDED COMPLAINT

In order to expedite this proceeding and to prevent the business disorganization consequent upon litigation, and expense incident to trial, respondent West Coast Plywood Company comes by its attorney, Theodore B. Bruener, and answering the amended complaint in this proceeding, states that it admits all of the material allegations of fact set forth in said complaint, provided this admission be

taken to mean that the understanding, agreement, combination, conspiracy and planned common course of action alleged in paragraph Seven of the amended complaint existed and continued only for a substantial part of the period of time charged in the amended complaint, to wit, for a substantial part of the period between May, 1935, to August 1, 1941, and not otherwise, and, except to the extent of such admission, denies all of the material allegations of fact set forth in the complaint, and waives all intervening procedure and further hearing as to the said facts.

Any and all admissions of fact made by respondent herein are made solely for the purpose of this proceeding, the enforcement or review thereof in the Circuit Court of Appeals, and for any review in the Supreme Court of the United States, or for any other proceeding in enforcement of the order to be entered herein, or to recover any penalty for violation thereof which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act as amended, and for no other purpose, but reserving the right of a hearing with oral argument and filing of briefs before the Commission as to what order, if any, should be issued upon the facts hereby admitted.

Dated this 8th day of June, 1949.

/s/ THEODORE B. BRUENER,
Attorney for Respondent, West Coast Plywood
Company, a Corporation.

Received June 8, 1949. [222]

United States of America
Before Federal Trade Commission

[Title of Cause.]

ANSWER OF RESPONDENT ANACORTES
VENEER, INC., TO AMENDED COMPLAINT

In order to expedite this proceeding and to prevent the business disorganization consequent upon litigation and expense incident to trial, respondent Anacortes Veneer, Inc., comes by its attorneys, Mc-Micken, Rupp & Schweppe and Alfred J. Schweppe, and answering the amended complaint in this proceeding, states that it admits all allegations of fact set forth in paragraph Two, subparagraph (13) of said complaint, and denies all of the other material allegations of fact set forth in the complaint, and waives all intervening procedure and further hearing as to the said facts.

Any and all admissions of fact made by respondent herein are made solely for the purpose of this proceeding, and the enforcement or review thereof in the Circuit Court of Appeals, and for any review in the Supreme Court of the United States, or for any other proceeding in enforcement of the order to be entered herein, or to recover any penalty for violation thereof which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act as amended, and for no other purpose, but reserving the right of a hearing with oral argument and filing of briefs before the

Commission as to what order, if any, should be issued upon the facts hereby admitted.

Dated: June 8, 1949.

McMICKEN, RUPP &
SCHWEPPE,

/s/ ALFRED J. SCHWEPPE,
Attorneys for Respondent
Anacortes Veneer, Inc.

Received June 8, 1949. [225]

United States of America
Before Federal Trade Commission

[Title of Cause.]

ANSWER OF RESPONDENT ROBINSON PLY-
WOOD AND TIMBER COMPANY TO
AMENDED COMPLAINT

In order to expedite this proceeding and to prevent the business disorganization consequent upon litigation, and expense incident to trial, respondent Robinson Plywood and Timber Company comes by its attorneys, McMicken, Rupp & Schweppe and Alfred J. Schweppe, and answering the amended complaint in this proceeding, states that it admits all of the material allegations of fact set forth in said complaint, provided this admission be taken to mean that the understanding, agreement, combination, conspiracy and planned common course of action alleged in paragraph Seven of the amended

complaint existed and continued only for a substantial part of the period of time charged in the amended complaint, to wit, for a substantial part of the period between May, 1935, to August 1, 1941, and not otherwise, and, except to the extent of such admission, denies all of the material allegations of fact set forth in the complaint, and waives all intervening procedure and further hearing as to the said facts.

Any and all admissions of fact made by respondent herein are made solely for the purpose of this proceeding, the enforcement or review thereof in the Circuit Court of Appeals, and for any review in the Supreme Court of the United States, or for any other proceeding in enforcement of the order to be entered herein, or to recover any penalty for violation thereof which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act as amended, and for no other purpose, but reserving the right of a hearing with oral argument and filing of briefs before the Commission as to what order, if any, should be issued upon the facts hereby admitted.

Dated: June 8, 1949.

McMICKEN, RUPP &
SCHWEPPE,

/s/ ALFRED J. SCHWEPPE,
Attorneys for Respondent Robinson Plywood and
Timber Company.

Received June 8, 1949. [226]

United States of America
Before Federal Trade Commission

[Title of Cause.]

ANSWER OF RESPONDENT, PACIFIC MUTUAL DOOR COMPANY, A CORPORATION, TO AMENDED COMPLAINT

In order to expedite this proceeding and to prevent the business disorganization consequent upon litigation, and expense incident to trial, respondent Pacific Mutual Door Company, a corporation, comes by its attorney Owen P. Hughes, of the law firm of Neal, Bonneville & Hughes, and answering the amended complaint in this proceeding, states that it admits all of the material allegations of fact set forth in said complaint, provided this admission be taken to mean that the understanding, agreement, combination, conspiracy and planned common course of action alleged in paragraph Seven of the amended complaint existed and continued only for a substantial part of the period of time charged in the amended complaint, to wit, for a substantial part of the period between May, 1935, to August 1, 1941, and not otherwise, and, except to the extent of such admission, denies all of the material allegations of fact set forth in the complaint, and waives all intervening procedure and further hearing as to the said facts.

Any and all admissions of fact made by respondent herein are made solely for the purpose of this proceeding, the enforcement or review thereof in the

Circuit Court of Appeals, and for any review in the Supreme Court of the United States, or for any other proceeding in enforcement of the order to be entered herein, or to recover any penalty for violation thereof which may be brought or instituted by virtue of the authority contained in [227] the Federal Trade Commission Act as amended, and for no other purpose, but reserving the right of a hearing with oral argument and filing of briefs before the Commission as to what order, if any, should be issued upon the facts hereby admitted.

Dated: June 8, 1949.

/s/ OWEN P. HUGHES,

Of the Law Firm of Neal, Bonneville & Hughes,
Attorney for Respondent, Pacific Mutual Door
Company.

Received June 8, 1949. [228]

United States of America
Before Federal Trade Commission

[Title of Cause.]

ANSWER OF RESPONDENT WEYERHAEUSER
SALES COMPANY TO AMENDED
COMPLAINT

Comes now Weyerhaeuser Sales Company, a corporation, one of the respondents named in the amended complaint of the Federal Trade Commis-

sion, and answers said amended complaint as follows:

This answering respondent admits that it is and at all times in said amended complaint mentioned has been a Washington corporation with its principal office in the city of Tacoma, and,

In order to expedite this proceeding and to prevent the business disorganization consequent upon litigation and expense incident to trial, this answering respondent states that it admits that it co-operated in the activities set forth in Paragraphs Four and Seven and in Subdivisions (3), (4), (5), (10) and (11) of Paragraph Eight of said amended complaint; provided this admission be taken to mean that the co-operation admitted hereinabove in this answer continued only for a substantial part of the period of time charged in the amended complaint, to wit, for a substantial part of the period of time from May, 1935, to August, 1941, and not otherwise; and except to the extent of such admission, denies all of the material allegations of fact set forth in the amended complaint, and specially denies the allegations of Subdivisions (1), (2), (6), (7), (8) and (9) of Paragraph Eight thereof. And this answering respondent waives all intervening procedure and further hearing as to the facts.

Any and all admissions of fact made by respondent herein are made solely for the purpose of this proceeding, the enforcement or review thereof in the Circuit Court of Appeals, and for any review thereof in the Supreme Court of the United States, or for any other proceeding in enforcement of the

order to be entered herein, or to recover any penalty for violation thereof which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act as amended, and for no other purpose, but reserving the right of a hearing with oral argument and filing of briefs before the Commission as to what order, if any, [229] should be issued upon the facts hereby admitted; but this respondent agrees that any order entered by the Commission may prohibit as to said respondent any or all of the acts alleged by Paragraphs Seven and Eight of the amended complaint to be illegal.

Dated: June 8, 1949.

/s/ ALFRED J. SCHWEPPE,

One of Attorneys for Respondent Weyerhaeuser Sales Company.

Received June 8, 1949. [230]

United States of America
Before Federal Trade Commission

[Title of Cause.]

ANSWER OF RESPONDENT WALLACE E.
DIFFORD TO AMENDED COMPLAINT

In order to expedite this proceeding and to prevent the business disorganization consequent upon litigation, and expense incident to trial, respondent Wallace E. Difford comes by his attorneys, Mc-

Micken, Rupp & Schweppe and Alfred J. Schweppe, and answering the amended complaint in this proceeding, states that he admits all of the material allegations of fact set forth in said complaint, provided this admission be taken to mean that the understanding, agreement, combination, conspiracy and planned common course of action alleged in paragraph Seven of the amended complaint existed and continued only for a substantial part of the period of time charged in the amended complaint, to wit, for a substantial part of the period between March 8, 1938, to August 1, 1941, and not otherwise, and, except to the extent of such admission, denies all of the material allegations of fact set forth in the complaint, and waives all intervening procedure and further hearing as to the said facts.

Any and all admissions of fact made by respondent herein are made solely for the purpose of this proceeding, the enforcement or review thereof in the Circuit Court of Appeals, and for any review in the Supreme Court of the United States, or for any other proceeding in enforcement of the order to be entered herein, or to recover any penalty for violation thereof which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act as amended, and for no other purpose, but reserving the right of a hearing with oral argument and filing of briefs before the

Commission as to what order, if any, should be issued upon the facts hereby admitted.

Dated: June 8, 1949.

/s/ ALFRED J. SCHWEPPE,
Attorney for Respondent,
Wallace E. Difford.

Received June 8, 1949. [231]

United States of America
Before Federal Trade Commission

[Title of Cause.]

REQUEST TO TRIAL EXAMINER TO CLOSE
THE RECORD FOR THE RECEPTION OF
TESTIMONY AND OTHER EVIDENCE

Come Now Reuben J. Martin and Lewis F. Depro, attorneys in support of the complaint, and Alfred J. Schweppe and M. A. Marquis, attorneys in opposition to the complaint, and state to the Trial Examiner that neither the attorneys in support of nor the attorneys in opposition to the allegations of the complaint desire to introduce any testimony or other evidence in support of or in opposition to the allegations of the complaint herein. Therefore, said attorneys herewith request the Trial Examiner herein to close the record herein for the reception of testimony and other evidence.

Dated this 24th day of August, 1949.

/s/ REUBEN J. MARTIN,
Attorney in Support of the
Complaint.

/s/ LEWIS F. DEPRO,
Attorney in Support of the
Complaint.

/s/ ALFRED J. SCHWEPPE,
Attorney in Opposition to the
Complaint.

/s/ M. A. MARQUIS,
Attorney in Opposition to the
Complaint.

Received August 26, 1949. [232]

United States of America
Before Federal Trade Commission

[Title of Cause.]

ORDER CLOSING RECEPTION OF EVIDENCE AND ALL OTHER PROCEEDINGS BEFORE TRIAL EXAMINER

Whereas, counsel for the respective parties to this proceeding have stated for the record that they do not desire to introduce any testimony or other evidence in support of or in opposition to the complaint herein; and the various respondents named

in the amended complaint have by their answers admitted all the material allegations of fact therein set forth, as existing and continuing for a substantial part of the period between May, 1935, and August 1, 1941, and have waived all intervening procedure and further hearing as to said facts, reserving the right of a hearing with oral argument and filing of briefs before the Commission as to what order, if any, should be issued upon the facts thus admitted;

And Whereas, it appears from the premises that no further action is required of the Trial Examiner and, no proofs or other matters being submitted to him for rulings or adjudication, there is no basis for a recommended decision herein; it is therefore

Ordered that the taking of testimony, receipt of evidence and all other proceedings in the above matter before this Trial Examiner are hereby closed.

This at Washington, D. C., September 30, 1949.

/s/ CLYDE M. HADLEY,
Trial Examiner.

Received September 30, 1949. [244]

United States of America
Before Federal Trade Commission

[Title of Cause.]

MOTION TO DISMISS AGAINST OREGON-
WASHINGTON PLYWOOD COMPANY

To Federal Trade Commission :

Oregon-Washington Plywood Company, one of the respondents in the above-entitled proceedings, respectfully applies to the Commission for an order dismissing against it the Amended Complaint filed in the above-entitled proceedings, and all proceedings relating to said Amended Complaint, on the ground that in the answer of this respondent to said Amended Complaint, it is Denied

That the Understanding, Agreement, Combination, Conspiracy and Common Course of Action Alleged in the Amended Complaint, or That Any Agreement or Understanding Between This Respondent and Any of the Other Respondents Named in the Amended Complaint to Fix or Control Prices or Limit Production of Plywood or Any Commodities, Continued or Existed for Any Period of Time Subsequent to August 31, 1941. [253]

That no evidence has been submitted or received to prove or establish that this respondent participated in or was a party to any agreement, understanding or common course of action with any of its competitors which had the effect of restraining or restricting the production or sale of plywood or

to in any way fix or control the prices of plywood or other commodities, at any time subsequent to August 31, 1941.

In support of this motion, this respondent submits that the purpose of the Federal Trade Commission Act is to terminate a current unlawful practice in restraint of trade or to prevent a threatened or probable unlawful trade practice. It is beyond the province of the Commission to anticipate that a practice voluntarily abandoned for a period of more than eight years will be revived.

There is no evidence or stipulated facts before the Commission to justify the order proposed by Counsel in support of the Amended Complaint, as against this respondent.

This respondent will not submit any further brief or any oral argument in support of this motion unless requested to do so by the Commission.

/s/ GEORGE J. PERKINS,
Counsel for Oregon-Washing-
ton Plywood Company.

Received November 14, 1949. [254]

United States of America
Before Federal Trade Commission

[Title of Cause.]

AMENDED ANSWER OF THE WHEELER,
OSGOOD CO. TO AMENDED COMPLAINT

In order to expedite this proceeding and to prevent the business disorganization consequent upon litigation, and expense incident to trial, respondent The Wheeler, Osgood Co. comes by its attorney Leo A. McGavick of the Law Firm of Scott, Langhorne & McGavick, and answering the Amended Complaint in this proceeding, states that it admits all of the material allegations of fact set forth in said Amended Complaint, provided this admission be taken to mean that the understanding, agreement, combination, conspiracy and planned common course of action alleged in paragraph Seven of the Amended Complaint existed and continued only for a substantial part of the period of time charged in the Amended Complaint, to wit, for a substantial part of the period between May, 1935, to August 1, 1941, and not otherwise, and, except to the extent of such admission, denies all of the material allegations of fact set forth in the complaint, and waives all intervening procedure and further hearing as to the said facts.

Further answering said Amended Complaint, and particularly section 12 of paragraph One, this respondent alleges that on July 30, 1946, all of the first mortgage bonds and debentures issued by the respondent and all of the common stock of the re-

respondent were purchased by a corporation organized for that purpose by individuals who prior to that time owned no stock of the respondent. That on October 24, 1946, the Articles of the respondent were amended and at that time the capital stock of the respondent was increased to 330,000 shares, consisting [261] of 80,000 shares of cumulative, convertible preferred stock and 250,000 shares of common stock, of which common stock, the corporation which had purchased the common stock and bonds and debentures, retained 37,500 shares. That in November, 1946, a public offering was made and the 80,000 shares of cumulative, convertible preferred stock and 100,000 shares of common stock of this respondent were sold throughout the United States. That at the time the present stockholders acquired the stock of the respondent, they had no notice of this litigation. That in the latter part of 1947, the respondent, for valuable consideration, having increased its capital stock, issued to additional persons an additional 125,000 shares of common stock and that at said time, said additional persons had no notice of this pending litigation.

Any and all admissions of fact made by respondent herein are made solely for the purpose of this proceeding, the enforcement or review thereof in the Circuit Court of Appeals, and for any review in the Supreme Court of the United States, or for any other proceeding in enforcement of the order to be entered herein, or to recover any penalty for violation thereof which may be brought or instituted by virtue of the authority contained in the

Federal Trade Commission Act as amended, and for no other purpose, but reserving the right of a hearing with oral argument and filing of briefs before the Commission as to what order, if any, should be issued upon the facts hereby admitted.

Dated: June 8, 1949.

THE WHEELER, OSGOOD CO.,

By /s/ LEO A. McGAVICK,

Of the Law Firm of Scott,
Langhorne & McGavick.

Filed December 14, 1949. [262]

United States of America
Before Federal Trade Commission

[Title of Cause.]

FINDINGS AS TO THE FACTS AND
CONCLUSION

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 19, 1949, issued and subsequently served upon the respondents named in the caption hereof its amended complaint in this proceeding, charging said respondents with the use of unfair methods of competition in commerce in violation of the provisions of that Act. On June 8, 1949, each of the respondents filed its separate answer to said amended complaint, in which answers all of the respondents,

except Northwest Door Company, Anacortes Veneer, Inc., and Weyerhaeuser Sales Company, for the purposes of this proceeding, admitted all of the material allegations of fact set forth in the amended complaint and waived all intervening procedure and further hearings as to said facts, the admissions in the answers of Northwest Door Company, Anacortes Veneer, Inc., and Weyerhaeuser Sales Company being limited to certain portions of said allegations, but each of the answers providing that the admissions contained therein should be taken to mean that the understanding, agreement, combination, conspiracy and planned common course of action alleged in Paragraph Seven of the amended complaint existed and continued only for a substantial portion of the period of time between May, 1935, and August 1, 1941. In said answers each of the respondents reserved the right to file a brief and present oral argument before the Commission as to what order, if any, should be issued upon the [273] facts admitted. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the amended complaint, the aforesaid answers of the respondents, a memorandum proposing disposition of the case filed by counsel in support of the amended complaint as, for, and in lieu of a brief, attached to which memorandum was a proposed form of order to cease and desist which was recommended to the Commission by counsel in support of the amended complaint (and, if the Commission should be of the opinion that an order to cease and desist in any form should be issued, by counsel for

the respondents, also), briefs and memoranda filed on behalf of certain of the respondents, and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

Findings as to the Facts

Paragraph One: (a) The respondent, Douglas Fir Plywood Association, is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located in the Tacoma Building, Tacoma 2, Washington. Said association is composed of a number of individuals, partnerships and corporations who are located principally in the States of Washington and Oregon, and who are engaged in the operation of mills for the manufacture of various plywood products and in the sale and distribution of such products when so manufactured, or in the sale and distribution of plywood products.

The aforesaid respondent, Douglas Fir Plywood Association, hereinafter sometimes referred to as "respondent association," was formed as a voluntary organization in about 1933, and served as the Code Authority for the industry during the period of the NRA. After the NRA was held unconstitutional, the voluntary association continued as a trade organization, and in the latter part of 1936 it was organized as a non-profit corporation under the

laws of the State of Washington for the declared purpose, among other things, of dealing with common industrial [274] problems of management such as those involved in the production, distribution, employment and financial functions of the plywood industry, and to secure cooperative action in advancing the common purposes of its members, to foster equity in business usages, and to promote activities aimed to enable the industry to conduct itself with the greatest economy and efficiency.

The names and addresses of the present officers of the respondent association are: Arnold Koutonen, president, c/o St. Paul & Tacoma Lumber Company, 1220 St. Paul Avenue, Tacoma 2, Washington; J. W. Forrester, vice president, c/o Coos Bay Lumber Company, Coos Bay, Oregon; Leonard Nystrom, secretary, c/o Associated Plywood Mills, Inc., Second and Garfield Streets, Eugene, Oregon; J. H. Smith, treasurer, c/o Puget Sound Plywood, Inc., Tacoma, Washington; and Harrison Clark, assistant secretary and assistant manager, c/o Douglas Fir Plywood Association, Tacoma Building, Tacoma 2, Washington. The said Harrison Clark was named in the complaint herein as a respondent both in his individual capacity and as assistant secretary of said Douglas Fir Plywood Association.

The names and addresses of the present members of the management committee of said respondent association are: E. W. Daniels, chairman, c/o Harbor Plywood Corporation, Hoquiam, Washington; Frost Snyder, c/o Vancouver Plywood & Veneer Company, Vancouver, Washington; R. E. Seeley,

c/o Simpson Logging Company, Shelton, Washington; N. O. Cruver, c/o The Wheeler, Osgood Co., 1216 St. Paul Street, Tacoma 1, Washington; Herman Tenzler, c/o Northwest Door Company, 1203 East D Street, Tacoma 1, Washington; Arnold Koutonen, c/o St. Paul & Tacoma Lumber Company, 1220 St. Paul Avenue, Tacoma 2, Washington; B. V. Hancock, c/o Cascades Plywood Corporation, 1008 Public Service Building, Portland 4, Oregon; T. B. Malarkey, c/o M & M Wood Working Company, 2301 North Columbia Road, Portland 3, Oregon; Victor Olson, c/o Washington Veneer Company, Bellingham, Washington; J. W. Forrester, c/o Coos Bay Lumber Company, Coos Bay, Oregon; and Charles E. Devlin, c/o Douglas Fir Plywood Association, Tacoma Building, Tacoma, Washington. [275]

(b) The respondent, Douglas Fir Plywood Information Bureau, hereinafter sometimes referred to as "respondent bureau," is a voluntary organization whose address is P. O. Box 1224, Tacoma, Washington. Said respondent maintains an office in the Rust Building, Tacoma 2, Washington, and was established, as declared by said respondent bureau, for the purposes of the Robinson-Patman Act. It functions to handle the transmittal of forms to applicants for classification, to assemble the data submitted by applicants, and to make recommendations to the member mills as to the classification of individual accounts. Respondent bureau is operated as an activity of the member and subscriber respondents and is advised by counsel for the respondent

association, and said bureau is financed by the diversion of money paid by subscribers to the respondent association pursuant to their contracts with said association.

Paragraph Two: (a) The respondent, Associated Plywood Mills, Inc., is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Second and Garfield Streets, Eugene, Oregon. It maintains plants at Eugene and Willamina, Oregon. Said respondent is now, and since January 6, 1938, it has been, a subscriber to the respondent association, and it is now, and since approximately 1940 it has been, a member of said respondent association.

(b) The respondent, Elliott Bay Mill Company, is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at 600 West Spokane Street, Seattle, Washington. This respondent is now, and since December 31, 1937, it has been, a subscriber to the respondent association, and it is now, and since prior to 1938 it has been, a member of said respondent association.

(c) The respondent, Harbor Plywood Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at Hoquiam, Washington. This respondent is now, and since January 10, 1938, it has [276] been, a subscriber to the respondent association, and it is now, and since

prior to 1938 it has been, a member of said respondent association.

(d) The respondent, M & M Wood Working Company (erroneously described in the complaint as M & M Woodworking Company), is a corporation organized and existing under the laws of the State of Oregon, with its principal office and place of business located at 2301 North Columbia Road, Portland 3, Oregon. This respondent maintains plants located at Longview, Washington, and at Albany and Portland, Oregon. Said respondent is now, and since December 30, 1937, it has been, a subscriber to the respondent association, and it is now, and since prior to 1938 it has been, a member of said respondent association.

(e) The respondent, Northwest Door Company, is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at 1203 East D Street, Tacoma 1, Washington. This respondent is now, and since May 28, 1938, it has been, a subscriber to the respondent association, and it is now, and since prior to 1938 it has been, a member of said respondent association.

(f) The respondent, Oregon-Washington Plywood Company, is a corporation organized and existing under the laws of the State of Oregon, with its principal office and place of business located at 1549 Dock Street, Tacoma, 2, Washington. This respondent is now, and since December 30, 1937, it has been, a subscriber to the respondent association,

and it is now, and since prior to 1938 it has been, a member of said respondent association.

(g) The respondent, United States Plywood Corporation, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 55 West 44th Street, New York 18, New York. This respondent maintains a plant located at Seattle, Washington. Said respondent is now, and since January 13, 1938, it has been, a subscriber to the respondent association, and it is now, and since prior to 1938 it has been, a member of said respondent association.

(h) The respondent, Vancouver Plywood & Veneer Company, is a corporation organized and existing under [277] the laws of the State of Washington, with its principal office and place of business located at Vancouver, Washington. This respondent is now, and since December 30, 1937, it has been, a subscriber to the respondent association, and it is now, and since prior to 1938 it has been, a member of said respondent association.

(i) The respondent, Washington Veneer Company, is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Olympia, Washington. This respondent is now, and since December 30, 1937, it has been, a subscriber to the respondent association, and it is now, and since prior to 1938 it has been, a member of said respondent association.

(j) The respondent, West Coast Plywood Com-

pany, is a corporation organized and existing under the laws of the State of Washington, with its office and principal place of business located at Aberdeen, Washington. This respondent is now, and since January 2, 1938, it has been, a subscriber to the respondent association, and it is now, and since prior to 1938 it has been, a member of said respondent association.

(k) The respondent, The Wheeler, Osgood Co., is a corporation incorporated on March 1, 1903, and existing under the laws of the State of Washington, with its principal office and place of business located at 1216 St. Paul Street, Tacoma 1, Washington.

On September 8, 1933, the respondent, The Wheeler, Osgood Co., caused to be incorporated under the laws of the State of Washington a new corporation under the name of Wheeler Osgood Sales Corporation, which said corporation was, throughout its existence, a wholly-owned subsidiary of respondent, The Wheeler, Osgood Co. The Wheeler, Osgood Co. subscribed to all of the capital stock of Wheeler Osgood Sales Corporation and paid for same by transferring and conveying to Wheeler Osgood Sales Corporation all of its inventory and other assets which were not covered by a deed of trust dated March 1, 1926. Wheeler Osgood Sales Corporation leased, on a month-to-month basis, from The Wheeler, Osgood Co., all of the plant and other property of The Wheeler, Osgood [278] Co. covered by the deed of trust, the lease being dated September 15, 1933, and all net profits of Wheeler Osgood Sales Corporation were paid to The Wheeler,

Osgood Co. as rent for the property so leased. On the same day Wheeler Osgood Sales Corporation employed N. O. Cruver who had been with The Wheeler, Osgood Co. for many years, and E. J. Calloway and Ralph Brindley, both also employees of The Wheeler, Osgood Co., as its principal executive officers. Wheeler Osgood Sales Corporation operated the plant of The Wheeler, Osgood Co. and all of the business formerly operated by The Wheeler, Osgood Co. from September 15, 1933, until June 30, 1944.

Wheeler Osgood Sales Corporation became a member of respondent association prior to 1938, and it became a subscriber to said respondent association December 31, 1937, and during all of the time the business and plant of The Wheeler, Osgood Co. was operated and conducted by Wheeler Osgood Sales Corporation, Wheeler Osgood Sales Corporation remained a member of and subscriber to said respondent association. During the period of time from September 15, 1933, to June 30, 1944, respondent, The Wheeler, Osgood Co., remained dormant and inactive and was engaged in the conduct under its own name of no business operations.

Since July 1, 1944, the business which had been operated by Wheeler Osgood Sales Corporation since September 15, 1933, and which prior to that time had been conducted and operated by the respondent, The Wheeler, Osgood Co., has been, and is now, operated by the respondent The Wheeler, Osgood Co. During the period from July 30, 1946, until the latter part of 1947, said respondent has

undergone certain financial reorganizations and has increased its outstanding capital stock, but at all times mentioned herein it has been, and is now, a subscriber to and a member of the respondent association.

(l) The respondent, Anacortes Veneer, Inc., is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Anacortes, Washington. This respondent is now, and since December 4, 1939, it has been, a subscriber to the respondent association, [279] and it is now, and since June, 1947, it has been, a member of said respondent association.

(m) All of the respondents hereinbefore named in Paragraph Two are hereinafter, for the sake of brevity, sometimes referred to as "member" and "subscriber" respondents.

(n) Those respondents herein designated as subscribers to the respondent association were signers of a contract with said association entitled "Subscription Contract—Cooperative Trade Promotion Campaign." All members of said association were signers of the contract, but not all signers of the contract were members of the association. Under the terms of the contract the signers agreed to pay 35c per M square feet of plywood production to be expended for trade promotion purposes by the association under the direction of the management committee set up in the contract. The subscribers voted for members of the management committee and were entitled to serve thereon, but they did not

vote for officers of the association if they were not also members of said association. All subscribers were licensed by the association to use trade-marks or trade names owned by the association in accordance with the provisions of the license agreements.

Paragraph Three: The respondent, Robinson Plywood and Timber Company, is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Everett, Washington. This respondent was formerly known as Robinson Manufacturing Company, and said respondent, under such former corporate name, was a subscriber to the respondent association until December 31, 1946.

Paragraph Four: (a) The respondent, Pacific Mutual Door Company, is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located in the Tacoma Building, Tacoma, Washington.

(b) The respondent, Weyerhaeuser Sales Company, is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business in the Tacoma Building, Tacoma, Washington. This respondent maintains its general executive offices in St. Paul, Minnesota. [280]

(c) The respondents hereinbefore named in Paragraph Four are engaged in the distribution of plywood products. Said respondents, while neither members of nor subscribers to the respondent association, have cooperated with said respondent asso-

ciation, the respondent bureau, and the member and subscriber respondents and with the respondent, Robinson Plywood and Timber Company, in many of the activities hereinafter set forth. Said respondents, for convenience, are hereinafter sometimes referred to as "non-affiliate" respondents.

Paragraph Five: The respondent, Wallace E. Difford, is an individual who maintains his office in the Henry Building, Seattle, Washington. Said respondent, from March 8, 1938, until June 30, 1946, was employed as managing director of the respondent association, and as such managing director he initiated, supervised and carried out many of the policies of said association. During the period of time mentioned in Paragraph Seven, said respondent cooperated with the respondent association, the respondent bureau, the member and subscriber respondents, the respondent, Robinson Plywood and Timber Company, and with the non-affiliate respondents in the activities hereinafter described. Said respondent Difford severed his employment with the respondent association as of June 30, 1946, and is presently engaged in the distribution of lumber products under the name of W. E. Difford & Sons.

Paragraph Six: The aforesaid member and subscriber respondents, named in Paragraph Two, the respondent, Robinson Plywood and Timber Company, named in Paragraph Three, and the non-affiliate respondents named in Paragraph Four, are all engaged in the manufacture and in the sale and distribution of, or in the sale and distribution of,

plywood products to dealers in such products located in states other than the states in which said respondents are located, causing said products, when so sold, to be transported from their respective places of business to the purchasers thereof located at various points in the several states of the United States other than the states of origin of such shipments and in the District of Columbia. There has been, and now is, a course of interstate trade and commerce in said products between the aforesaid respondents and dealers in such [281] products located throughout the several states of the United States. Said member and subscriber respondents, said respondent, Robinson Plywood and Timber Company, and said non-affiliate respondents are now, and during all of the times mentioned herein they have been, engaged in competition with others in making and seeking to make sales of their products in said commerce, and, but for the facts hereinafter found, they would now be in free, active and substantial competition with each other.

Paragraph Seven: Said member and subscriber respondents, said respondent, Robinson Plywood and Timber Company, and said non-affiliate respondents, acting in cooperation with each other, and through and in cooperation with the respondent association and its officers and management committee, and through and in cooperation with the respondent bureau, and through and in cooperation with the respondents Wallace E. Difford and Harrison Clark, and each of them, during a substantial part of the period of time between May, 1935, and

August 1, 1941, did engage in an understanding, agreement, combination, conspiracy and planned common course of action among themselves and with and through the respondent association, said respondent bureau, and said respondents, Wallace E. Difford and Harrison Clark, to restrict, restrain and suppress competition in the sale and distribution of plywood products to customers located throughout the several states of the United States and in the District of Columbia, as aforesaid, by agreeing to fix and maintain prices, terms and discounts at which said plywood products were to be sold, and to cooperate with each other in the enforcement and maintenance of the prices, terms and discounts so fixed, by exchanging information through said respondent association and said respondent bureau as to the prices, terms and discounts at which said member and subscriber respondents, said respondent Robinson Plywood and Timber Company, and said non-affiliate respondents had sold and were offering to sell said plywood products to customers and prospective customers.

Paragraph Eight: (a) Pursuant to the aforesaid understanding, agreement, combination, conspiracy and planned common course of action, and in furtherance [282] thereof, all of said respondents except Northwest Door Company, Anacortes Veneer, Inc., and Weyerhaeuser Sales Company, during the period of time mentioned in Paragraph Seven, did and performed, among others, the following acts and things:

(1) Agreed to and did curtail the production of plywood.

(2) Compiled statistical information in respect to production, sales, shipments, and orders on hand, which information was made available to respondents but which was denied to the purchasing trade.

(3) Adopted and used a uniform basic price list containing uniform net extras to be charged thereon and uniform discounts to be extended therefrom.

(4) Compiled and used lists of buyers entitled to receive a so-called jobbers' discount of 5%.

(5) Adopted and used a so-called functional compensation plan of distribution that included: (a) issuance of uniform net dealers' prices carrying uniform prices on different quantities and a uniform cash discount; (b) issuance of identically worded compensation schedules embodying definitions of trade factors, and providing for the functional discount under prescribed conditions as to who may receive and under what conditions same may be granted, and adopted an unpublished agreement interpreting the plan, which agreement provided that a buyer doing less than 40% of its business at wholesale would be considered a dealer under the plan; (c) establishment of an Information Bureau to develop information as to the trade

status of buyers, which applied the secret requirement of 40% wholesale in determining the status of buyers under the plan and which transmitted to member respondents and subscriber respondents conclusions and findings as to the status of buyers. [283]

(6) Adopted arbitrarily rules providing that the Government and certain industrial buyers would be required to pay dealers' prices, and that certain specified classes of industrial buyers would receive a 5% discount from the dealers' price.

(7) Acted to insure the success of the plan, and to compel compliance therewith, by holding meetings with distributors for the purpose of forcing or inducing adherence to the price and discount provisions, inviting distributors to submit information in reference to suspected deviations from the plan by manufacturers or others, acting through the respondent association to conduct general investigations of the members' files or to investigate specific instances of reported violations, establishing the respondent association as an intermediary to place business among the member respondents, using mill numbers to identify the source of manufacture in cases of reported deviation from the plan, providing in the agreement licensing manufacturers to use the trade-marks obtained by the respondent association that same could be used only on grades approved by the respondent association.

(8) Threatened, sought to, and did, cut off the supply of distributors who failed or refused to adhere to prices or classification provisions.

(9) Quoted only on a delivered price basis and in conjunction therewith computed the rail freight from Tacoma, Washington, irrespective of the origin of shipment or the rate applicable thereto, and used a uniform schedule of estimated weights which were higher than actual weights and which, when used in connection with a fixed base price and a single basing point, assured the industry of uniform delivered price quotations to buyers.

(10) Shipped by water to East Coast and Gulf points only on a C.I.F. basis.

(11) Applied a uniform net addition to the ocean freight rate on water shipments, and a uniform net addition on sales made in the primary market. [284]

(b) Pursuant to said understanding, agreement, combination, conspiracy and planned common course of action, and in furtherance thereof, the respondent, Northwest Door Company, during the same period of time, did and performed the following acts and things:

(1) Compiled statistical information in respect to production, sales, shipments, and orders on hand, which information was made available to respondents but which was denied to the purchasing trade.

(2) Adopted and used a uniform basic price list containing uniform net extras to be charged thereon and uniform discounts to be extended therefrom.

(3) Adopted and used a so-called functional compensation plan of distribution that included: (a) issuance of uniform net dealers' prices carrying uniform prices on different quantities and a uniform cash discount; (b) issuance of identically worded compensation schedules embodying definitions of trade factors, and providing for the functional discount under prescribed conditions as to who may receive and under what conditions same may be granted, and adopted an unpublished agreement interpreting the plan, which agreement provided that a buyer doing less than 40% of its business at wholesale would be considered a dealer under the plan.

(4) Acted to insure the success of the plan, and to compel compliance therewith, by holding meetings with distributors for the purpose of forcing or inducing adherence to the price and discount provisions, inviting distributors to submit information in reference to suspected deviations from the plan by manufacturers or others, acting through the respondent association to conduct general investigations of the members' files or to investigate specific instances of reported violations, establishing the respondent association as an intermediary to

place business among [285] the member respondents, using mill numbers to identify the source of manufacture in cases of reported deviation from the plan, providing in the agreement licensing manufacturers to use the trademarks obtained by the respondent association that same could be used only on grades approved by the respondent association.

(5) Quoted only on a delivered price basis and in conjunction therewith computed the rail freight from Tacoma, Washington, irrespective of the origin of shipment or the rate applicable thereto, and used a uniform schedule of estimated weights which were higher than actual weights and which, when used in connection with a fixed base price and a single basing point, assured the industry of uniform delivered price quotations to buyers.

(6) Shipped by water to East Coast and Gulf points only on a C.I.F. basis.

(7) Applied a uniform net addition to the ocean freight rate on water shipments, and a uniform net addition on sales made in the primary market.

(c) Pursuant to said understanding, agreement, combination, conspiracy and planned common course of action, and in furtherance thereof, the respondent, Weyerhaeuser Sales Company, during the same period of time, did and performed the following acts and things:

(1) Adopted and used a uniform basic price list containing uniform net extras to be charged thereon and uniform discounts to be extended therefrom.

(2) Compiled and used lists of buyers entitled to receive a so-called jobbers' discount of 5%.

(3) Adopted and used a so-called functional compensation plan of distribution that included: (a) issuance of uniform net dealers' prices carrying uniform prices [286] on different quantities and a uniform cash discount; (b) issuance of identically worded compensation schedules embodying definitions of trade factors, and providing for the functional discount under prescribed conditions as to who may receive and under what conditions same may be granted, and adopted an unpublished agreement interpreting the plan, which agreement provided that a buyer doing less than 40% of its business at wholesale would be considered a dealer under the plan; (c) establishment of an Information Bureau to develop information as to the trade status of buyers, which applied the secret requirement of 40% wholesale in determining the status of buyers under the plan and which transmitted to member respondents and subscriber respondents conclusions and findings as to the status of buyers.

(4) Shipped by water to East Coast and Gulf points only on a C.I.F. basis.

(5) Applied a uniform net addition to the ocean freight rate on water shipments, and a uniform net addition on sales made in the primary market.

(d) The respondent, Anacortes Veneer, Inc., began operations on November 23, 1939. On December 4, 1939, said respondent became a subscriber to the respondent association, and on December 5, 1939, said respondent issued Dealer Price List No. 39-B containing identical prices, terms and conditions as shown in Dealer Price List No. 39-B issued by other members of and subscribers to the respondent association. In connection with its Dealer Price List No. 39-B, said respondent, on December 5, 1939, also issued, and made effective on that date, a Wholesale Functional Service Compensation Schedule identical in form, language, terms, conditions and provisions with Wholesale Functional Service Compensation Schedules issued and used by all other members of and subscribers to the respondent association, and in [287] connection with the use thereof said respondent made use of the services of the respondent, Douglas Fir Plywood Information Bureau.

Pointing out that these are the only facts tending to connect it with the unlawful combination and conspiracy admitted to have been engaged in by the other respondents, respondent, Anacortes Veneer, Inc., contends that as to it the amended complaint must be dismissed. This is so, it is said, because this respondent did not begin operations

until November 23, 1939, only twelve days before it issued its price list; that, being a new company faced with the problem of setting up a price list, it merely and naturally followed the price list already being used by the members of the industry generally; and that the record shows nothing more than a simple voluntary act on the part of Anacortes, importing no illegal conduct of any kind.

It may be, as the respondent contends, that the mere act on the part of one manufacturer of following the prices of another manufacturer is not in and of itself a violation of law. In the case of the respondent, Anacortes Veneer, Inc., however, that is not the full picture. The price list issued by Anacortes on December 5, 1939, contained prices, terms and conditions of sale of plywood products identical in all respects with the prices, terms and conditions of sale of such products, which, admittedly, has been agreed upon and fixed and which were being used by the subscribers to and members of the respondent association, and others, pursuant to and in furtherance of an unlawful conspiracy. In addition, respondent Anacortes adopted the Compensation Schedule which likewise had been agreed upon by the other respondents, which Compensation Schedule was used as a means of stabilizing the prices of plywood products. This respondent also availed itself of the use of the services of the respondent, Douglas Fir Plywood Information Bureau, which bureau was created to provide the membership of the respondent association with information necessary for the classification of buyers

of plywood. Having become a member of the association and, presumably, having acquainted itself with the purposes and activities of said association and its members, respondent Anacortes, after obtaining for itself the benefits of such purposes and activities, obviously cannot now disclaim joint responsibility therefor. [288]

In the circumstances and for the reasons stated, the Commission is of the opinion and therefore finds, that the respondent, Anacortes Veneer, Inc., was a participant in the unlawful understanding, agreement, combination and conspiracy herein described and that the acts of said respondent, as herein set forth, were all done pursuant to and in furtherance thereof.

Paragraph Nine: The capacity, tendency and results of the aforesaid understanding, agreement, combination, conspiracy and planned common course of action, and the acts and things done thereunder and pursuant thereto, by the respondents, as hereinbefore set forth, have been and now are:

(a) To interfere with and curtail the production of plywood products and the sale of same in interstate commerce to dealers therein who, but for the existence of said understanding, agreement, combination, conspiracy and planned common course of action, would be able to purchase their requirements of said products from the manufacturers thereof.

(b) To force many dealers in plywood products to discontinue the sale of said products because

of their inability to obtain them from manufacturers or to maintain a supply thereof at reasonable prices.

(c) To substantially increase the price of said plywood products to wholesalers, retailers and to the consuming public.

(d) To substantially increase the price of said products when sold to the Government and to certain industrial buyers who, but for the understanding, agreement, combination, conspiracy, and planned common course of action, would be able to secure their requirements of said plywood products at substantially lower prices.

(e) To concentrate in the hands of the respondents the power to dominate and control the [289] business policies and practices of the manufacturers and distributors of plywood products, and the power to exclude from the industry those manufacturers and distributors who do not conform to the rules, regulations, and requirements established by said respondents, and thus to create a monopoly in said member and subscriber, former subscriber, and non-affiliate respondents named in Paragraphs Two, Three and Four hereof in the sale of said plywood products.

Paragraph Ten: The amended complaint in this proceeding named as a respondent herein Harrison Clark in his individual capacity as well as in his capacity as assistant secretary of the respondent, Douglas Fir Plywood Association. It appears, however, that this respondent is still an officer of the respondent association, and any order to cease

and desist issued herein will run against the respondent association and all of its officers, agents, representatives and employees. So long as Mr. Clark is an officer of the association, or even an employee thereof, he will be bound by the terms of the order, even though not individually named therein. In view of this fact the Commission is of the opinion that insofar as the amended complaint names Mr. Clark as a respondent in his individual capacity, it may properly be dismissed.

The amended complaint also named as a respondent Buffelen Manufacturing Co. It appeared, however, from an appropriate motion made before the trial examiner, that this respondent was not organized until February 19, 1948, and that it did not participate in any of the unlawful acts or practices described in the complaint. Accordingly, the trial examiner on September 30, 1949, entered his order dismissing the amended complaint as to Buffelen Manufacturing Co.

Conclusion

The acts and practices of the respondents, as herein found, were all to the prejudice and injury of the public and of competitors of said respondents; have [290] had a dangerous tendency to and have actually hindered and prevented competition in the sale of plywood products in interstate commerce; have unreasonably restrained such commerce in plywood products; and have constituted unfair methods of competition in commerce within the

intent and meaning of Section 5 of the Federal Trade Commission Act.

By the Commission.

[Seal] /s/ JAS. M. MEAD,
 Chairman.

Issued: October 20, 1950.

Attest:

 /s/ D. C. DANIEL,
 Secretary. [291A]

 —————
 United States of America
 Before Federal Trade Commission

Commissioners: James M. Mead, Chairman,
 William A. Ayres,
 Lowell B. Mason,
 John Carson.

 Docket No. 5529

 In the Matter of:
DOUGLAS FIR PLYWOOD ASSOCIATION, a
Corporation; HARRISON CLARK, Individ-
ually and as Assistant Secretary of Douglas
Fir Plywood Association; DOUGLAS FIR
PLYWOOD INFORMATION BUREAU, a
Voluntary Organization, and ASSOCIATED
PLYWOOD MILLS, INC., a Corporation;
BUFFELEN MANUFACTURING CO., a
Corporation; ELLIOTT BAY MILL COM-
PANY, a Corporation; HARBOR PLYWOOD

CORPORATION, a Corporation; M & M WOOD WORKING COMPANY (Erroneously Described in the Complaint as M & M Woodworking Company), a Corporation; NORTHWEST DOOR COMPANY, a Corporation; OREGON-WASHINGTON PLYWOOD COMPANY, a Corporation; UNITED STATES PLYWOOD CORPORATION, a Corporation; VANCOUVER PLYWOOD & VENEER COMPANY, a Corporation; WASHINGTON VENEER COMPANY, a Corporation; WEST COAST PLYWOOD COMPANY, a Corporation; THE WHEELER, OSGOOD CO., a Corporation, and ANACORTES VENEER, INC., a Corporation, All Individually and as Members of and Subscribers to the Douglas Fir Plywood Association, and ROBINSON PLYWOOD AND TIMBER COMPANY, a Corporation; PACIFIC MUTUAL DOOR COMPANY, a Corporation; WEYERHAEUSER SALES COMPANY, a Corporation, and WALLACE E. DIFFORD.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, answers thereto filed on behalf of all of the respondents, a memorandum filed by counsel in support of the amended complaint as, for, and in lieu of an opening brief, attached to which memorandum was a proposed form of order to cease and desist which was recommended by

counsel in support of the complaint (and, if the Commission should be of the opinion that an order to cease and desist in any form should be issued, by counsel for the respondents, also), briefs and memoranda filed on behalf of certain of the respondents, a reply brief of counsel in support of the complaint, and oral argument before the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondents (except Buffelen Manufacturing Co.) have violated the provisions of the Federal Trade Commission Act:

It Is Ordered that the respondent, Douglas Fir Plywood Association, a corporation, it's officers, members of its management committee, and its agents, representatives and employees, the respondent, Douglas Fir Plywood Information Bureau, a voluntary organization, and its officers, agents, representatives and employees, the corporate respondents, Associated Plywood Mills, Inc., Elliott Bay Mill Company, Harbor Plywood Corporation, M & M Wood Working Company, Northwest Door Company, Oregon-Washington Plywood Company, United States [292] Plywood Corporation, Vancouver Plywood & Veneer Company, Washington Veneer Company, West Coast Plywood Company, Anacortes Veneer, Inc., and The Wheeler, Osgood Co., individually and as members of and subscribers to said respondent association, and their respective officers, agents, representatives and employees, the corporate respondents, Robinson Plywood and Timber Company, Pacific Mutual Door Company, and

Weyerhaeuser Sales Company, and their respective officers, agents, representatives and employees, and the respondent, Wallace E. Difford, an individual, and his agents, representatives and employees, in or in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of plywood products, do forthwith cease and desist from entering into, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination or conspiracy between or among any two or more of said respondents, or between or among any one or more of said respondents and other producers or sole distributors of plywood products for other producers not parties hereto, to do or perform any of the following acts or things:

1. Fixing, establishing or maintaining uniform prices, and in connection therewith, uniform discounts, terms or conditions of sale for any kind or grade of Douglas Fir Plywood, or in any manner fixing or establishing any prices, and in connection therewith, discounts, terms, or conditions for sale of such plywood;

2. Restricting or curtailing the production of Douglas Fir Plywood;

3. Compiling, exchanging, or disseminating, between and among members of or subscribers to the respondent association statistical information in respect to the production, sales, shipments, and orders on hand of Douglas Fir Plywood, or any one thereof, unless such statistical information as is

made available to members or subscribers is readily, fully, and on reasonable terms made available to the purchasing [293] and distributing trade, and where the identity of the manufacturer, seller, or purchaser cannot be determined through such information, and which has not the capacity or tendency of aiding in securing compliance with announced prices, terms, or conditions of sale;

4. Preparing, adopting, or using any basic price list at which Douglas Fir Plywood is to be sold which contains uniform net extras or additions to be charged thereon, or the preparation, adoption or use of uniform net extras or additions in conjunction with a basic price list;

5. Preparing, maintaining, or circulating any list or classification of buyers of Douglas Fir Plywood considered or recognized by respondents as "jobbers," "wholesalers," or "dealers," or any similar list or classification of buyers; provided that nothing contained in this Paragraph 5 shall prevent the respondent association from maintaining mailing lists of buyers and distributors of Douglas Fir Plywood when the Association shows that such lists are solely for trade promotion purposes;

6. Adopting and using a plan of distribution which includes one or more of the following:

(a) Issuance of a uniform net dealers' price list carrying uniform prices on different quantities and a uniform cash discount;

(b) Adoption of uniform definitions of

classes of buyers, and providing for the granting of a uniform discount under uniform prescribed conditions as to who may receive and under what conditions same may be [294] granted;

7. Adopting and using any plan which includes a classification of buyers of Douglas Fir Plywood on the basis of entitlement to price or discount, or communicating to producers or distributors of such plywood conclusions and findings in reference to such classification;

8. Selling only on a delivered price basis, and in conjunction therewith:

(a) Computing the rail freight rate from any point other than the point of origin of the shipment;

(b) Using a uniform schedule of estimated weights;

(c) Adding a uniform net addition on sales made in the primary market;

9. Refusing to ship to East Coast and Gulf points on any basis other than a C.I.F. basis with uniform net additions to the ocean freight rate.

It Is Further Ordered that nothing contained herein shall be deemed to affect lawful relations, including purchase and sale contracts or transactions, among the several respondents, or between a respondent and its subsidiaries, or between subsidiaries of a respondent, or between any one or more of said respondents and any others not parties hereto, and not in unlawful restraint of trade.

It Is Further Ordered, for reasons appearing in the Commission's findings as to the facts in this proceeding, that the amended complaint herein be, and it hereby is, dismissed as to the respondent, Harrison Clark, in his individual capacity, it being understood, however, that said amended complaint is not being dismissed as against the said Harrison Clark as an officer of the respondent, Douglas Fir Plywood Association. [295]

It Is Further Ordered that the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

[Seal] /s/ D. C. DANIEL,
Secretary.

Issued: October 20, 1950. [296]

Before The Federal Trade Commission

[Title of Cause.]

Wednesday, April 19, 1950

The above-entitled matter came on for oral argument at 10:00 a.m.

Before: JOHN CARSON, Acting Chairman.
LOWELL B. MASON, Commissioner.
JAMES M. MEAD, Commissioner.

Appearances:

EVERETTE MacINTYRE, and
LEWIS F. DEPRO,
Counsel in support of the complaint.

CARLTON HILL,
53 W. Jackson Blvd.,
Chicago 4, Ill.,
Attorney for Crawford Door Co.

OWEN D. HUGHES, of
NEAL, BONNEVILLE & HUGHES,
816 Washington Bldg.,
Tacoma, Washington,
Attorney for Pacific Mutual Door Co.,
Buffalo Mfg. Co., A. O. Peterson,
and N. O. Cruver.

RAYMOND T. HEILPERN,
225 Broadway,
New York, N. Y.,
Attorney for United States Plywood
Corporation.

E. N. EISENHOWER,

Puget Sound Bank Bldg.,
Tacoma, Washington,

Attorney for Northwest Door Co., and
Monarch Door & Mfg. Co.

ALFRED J. SCHWEPPE,

657 Colman Bldg.,
Seattle 4, Wash.,

Attorney for the respondents.

TRANSCRIPT OF ORAL ARGUMENT

Mr. MacIntyre: They ask you to pass on their assertion that they discontinued.

Commissioner Mason: Not their proof?

Mr. MacIntyre: There is no proof in the record that they discontinued. They have asserted that. There is no evidence contrary to the assertion. But we do have some and I have discussed that this morning with counsel for respondents.

Commissioner Mason: It seems to me that they are in the position of a supplicant if they say they did wrong but they stopped in 1941. Certainly you can stand on your position that you don't have to introduce anything further. You can have evidence of a conspiracy in 1915 and we could take an order and we would be justified in taking that order if there was nothing in the record to show that they have stopped that conspiracy in 1951.

It seems to me the burden is on them, even to have the motion considered. Perhaps I am anticipating what they will say. Mr. Depro made a

point that there is nothing in this record to show that this admitted conspiracy is still not taking place. Maybe they will have something to say about that. The burden is not on you gentlemen.

Mr. MacIntyre: I ask that there be marked for identification as Commission's exhibits in the case, photostats of telegrams, 14 in number. They relate to a matter which is discussed on page 34 of the transcript of record before the trial examiner in docket 5528.

(These documents were not marked for identification, but by agreement of counsel, they were copied into the record at page 1915.)

When taken as a whole, they show that the licensing agreements alleged in the last subparagraph of the charging paragraph in the amended complaint in Docket 5528 were in existence and in operation as of May 1, 1949, and that they were cancelled out, as is shown by these telegrams, as of that date, at the request of our colleague, the late Reuben J. Martin, who was the trial attorney in charge of the case on the West Coast.

I am not offering that as evidence of continuance of all of the unlawful practices in these cases, alleged in the amended complaints, but I am offering it as something that we could look to as probably a reason to believe that if we were to take evidence we could adduce evidence of some continuation beyond the dates asserted by respondents.

* * *

Commissioner Mason: He said he denies the

abandonment. It is not in the womb; it is still floating around somewhere, haunting us, very much alive.

If these things which Mr. MacIntyre, chief trial counsel, says are so, then it is not in the tomb. But he pleads it is in the tomb. It is very much walking the streets if we are to take his statement here.

Mr. Schweppe: Of course, I didn't know until this morning when Mr. MacIntyre said, "I am going to tell the Commission that we might have some evidence subsequent to 1941, and I am going to call their attention to some telegrams," on which I will comment very briefly later.

* * *

Mr. Schweppe: I want to advert for a moment to the telegrams. I will say, incidentally, that the telegrams refer only to the Fir door case, Docket 5528. They have nothing whatever to do with the Plywood case. And government counsel has made no suggestion that he now has evidence outside of the record that is before you relating to the Plywood case subsequent to 1941. He says, with reference to the Door case, "I have telegrams to file and I want to put those in the record." I am familiar with those telegrams because I obtained them.

* * *

I said to Mr. Martin, "Will it make you feel any better if we obtain cancellations of all those contracts? Then certainly there can be no possible claim on your part that subsequent to 1941 there is still something outstanding that you claim may be illegal."

Mr. Martin said, "I will get in touch with Mr. MacIntyre," which I assume he did; and as a result of that I obtained those telegrams which are before you. We wired to the Crawford Door Company and all the constituent door companies, and said, "This case is about to be closed, but government counsel, so that they can't be criticized at all, would like these contracts cancelled."

* * *

We don't concede for a second that the existence of those telegrams or the existence of those contracts to which the telegrams relate, constituted illegality in the slightest. It was done just to satisfy Mr. Martin that he was perfectly in the clear in agreeing to accept the admission answers that there was no illegality subsequent to November, 1941.

* * *

Commissioner Mason: Are these telegrams in the record?

Mr. MacIntyre: I offered them.

Commissioner Mason: Do you want the Commission to rule on them?

Mr. MacIntyre: For that particular purpose, of what might have been in effect post-dating the conferences of 1949.

Commissioner Mason: All right. What do you say, Mr. Schweppe?

Mr. Schweppe: I have no objection to their going into the record, but I must correct counsel's statement that these post-date any discussions. Those telegrams were exchanged and received before the

addition answers were filed and accepted by the Government in the Door case. And it was done solely to eliminate a possible doubt that Mr. Martin had in his mind as to whether there was anything outstanding after 1941.

This is not something that happened after the record was closed. This is something that happened before the conferences were closed and before the admission answers were filed and accepted by the Government and before the record was closed.

On that statement—which I happen to know is absolutely correct—I have no objection to their being entered in the record as part of Government counsel's argument.

Commissioner Mason: Do you agree with Mr. Schweppe's background statement?

Mr. MacIntyre: I do.

Commissioner Mason: This is a strange introduction of evidence or whatever you have. Do you agree with his interpretation of it?

Mr. MacIntyre: No, sir. I do not agree with his interpretation of what they might show. But I do agree as to the timing of them with reference to the conference.

* * *

Mr. Schweppe: Some of them are and some of them are not.

As to the door industry, the change is not quite so significant. The number of door manufacturers who existed in 1941 and who are respondents in the door proceeding number 5528, was 7, and outside of the door industry today you have, outside of

that group of respondents who are in the case, you have 9.

Their production is relatively not as great with reference to the original respondents in the Door case as the production and number of the outside persons in the Plywood case.

But I bring that to your attention, gentlemen, and I will leave it, if there is no objection, on the same basis as the telegrams, as part of my argument, not as part of the record. These are very late figures, but the earlier figures—which are almost as good as that—were obtained from the Department of Commerce bulletins.

Commissioner Mason: Is there very much material in the telegrams? Mr. MacIntyre, is there any chance that you can read them in the argument so that we don't have a question of corporeal papers being put in as exhibits?

Mr. MacIntyre: I am in agreement that the 14 telegrams may be copied and this also.

Commissioner Mason: In the oral argument?

Mr. MacIntyre: Yes, sir.

Commissioner Mason: Then you will get those papers back.

Mr. MacIntyre: I have no objection to the documents that he has just passed up.

(These documents were not marked for identification, but by agreement of counsel, they were copied into the record at the conclusion of oral argument of all counsel.)

(The telegrams offered by Mr. MacIntyre for the record are as follows:)

“Crawford Door Company, 401 St. Jean Avenue, Detroit, Michigan. Attn: Dave Crawford We Request Immediate Cancellation of Our Present Licensing Agreement, Dated January 1, 1945, and Any and All Subsequent Agreements to Date With You to Manufacture Craw-Fir-Doors. Herman Snider, Acme Door Company.”

“Acme Door Company, Hoquiam, Washington. Cancellation Accepted This Date Per Your Telegram. Crawford Door Company, D. C. Crawford, Vice President.” “Sent 5-13-49.”

“Mr. D. C. Crawford, 401 St. Jean St., Detroit, Michigan. We Request Immediate Cancellation of Our Present Licensing Agreement With You. This Being Dated January 1, 1945, and Any and All Subsequent Agreements to Date. M and M Wood Working Company, Herbert Malarkey, President.”

“Herbert Malarkey, M & M Wood Working Co., Portland, Oregon. Cancellation Accepted This Date Per Your Telegram. Crawford Door Company, D. C. Crawford, Vice President.” “Sent 5-16-49, Air-mail cc to: Carlton W. Hills.”

“Crawford Door Company. Attention: D. C. Crawford Wux Detroit, Michigan. We Request Immediate Cancellation of Our Present Licensing Agreement With You. This Agreement Dated January 1, 1945, as Well as All Subsequent Agreements to Date. Monarch Door & Mfg. Co.”

“Monarch Door and Mfg., Co., Tacoma, Wash-

ington. Cancellation Accepted This Date Per Your Telegram. Crawford Door Company, D. C. Crawford, Vice President. 5-16-49."

"Crawford Door Co. Attn: Mr. Dave Crawford, 401 St. Jean Avenue, Detroit, Michigan. We Request Immediate Cancellation of Our Present Licensing Agreement With You. This Agreement Dated January 1, 1945, as Well as Any and All Subsequent Agreements to Date. Northwest Door Co."

"Northwest Door & Plywood Sales, Tacoma, Washington. Cancellation Accepted This Date Per Your Telegram. Crawford Door Company, D. C. Crawford, Vice President. 5-17-49."

"Crawford Door Company, 401 St. Jean Avenue, Detroit 14, Michigan. We Request Immediate Cancellation of Our Present Licensing Agreement With You, This Agreement Being Dated January 1, 1945, as Well as Any and All Subsequent Agreements to Date. The Wheeler, Osgood Company."

"The Wheeler Osgood Company, 1212 St. Paul Ave., Tacoma, Washington. Cancellation Accepted This Date Per Your Telegram. Crawford Door Company, D. C. Crawford, Vice President." "Sent: 5-13-49 Airmail cc: Carlton W. Hill."

"Crawford Door Co., 401 St. Jean St., Detroit 14, Mich. Simpson Logging Company Hereby Offers to Terminate in Its Entirety as of This Date That Certain Agreement Between Crawford Door Co. and Simpson, Dated October 1, 1946, as Well as All Amendments Thereof to Date. If This Is Acceptable to You, Please Advise by Wire. Simpson Log-

ging Company, 1010 White Building, Seattle 1, Washington, by J. A. Priest, Secretary.”

“Simpson Logging Company, 1010 White Building, Seattle, Washington. Cancellation Accepted This Date Per Your Telegram. Crawford Door Company, D. C. Crawford, Vice President.” “Sent: 5/13/49 Airmail cc: Carlton W. Hill.”

“Mr. Dave Crawford, Crawford Door Company, Detroit, Michigan. We Request Immediate Cancellation of Buffelen Lumber and Manufacturing Company Licensing Agreement With You. This Agreement Being Dated January First, 1945, as Well as Any Subsequent Agreements to Date With Either Former Company or Present Company. Buffelen Manufacturing Company.”

“Buffelen Manufacturing Co., Tacoma, Washington. Cancellation Accepted This Date Per Your Telegram. Crawford Door Company, D. C. Crawford, Vice President. Sent: 5/13/49 Airmail cc: Carlton W. Hill.”

* * *

United States of America
Federal Trade Commission

I, D. C. Daniel, Secretary of the Federal Trade Commission, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of: transcript of oral argument before the Federal Trade Commission in its Docket 5529, in the matter of Douglas Fir Plywood Association, et al.

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the Federal Trade

Commission to be affixed this 31st day of January, A.D. 1951, at Washington, D. C.

/s/ D. C. DANIEL,
Secretary.

[Endorsed]: Filed February 5, 1951.

United States of America
Before Federal Trade Commission

[Title of Cause.]

CERTIFICATE OF SECRETARY

I, D. C. Daniel, Secretary of the Federal Trade Commission and official custodian of its records, do hereby certify that transmitted herewith is a full, true, and complete transcript of proceedings had before the Federal Trade Commission in the above-entitled matter.

That this transcript is certified to the United States Court of Appeals for the Ninth Circuit, pursuant to the filing in said Court of a petition for review of an Order to Cease and Desist dated October 20, 1950, issued by the Federal Trade Commission in the above indicated proceeding.

In witness whereof, I hereunto subscribe my name, and affix the seal of the said Federal Trade Commission, at its office in the City of Washington, D. C., this 31st day of January, A.D. 1951.

/s/ D. C. DANIEL,
Secretary.

[Endorsed]: Nos. 12774, 12791, 12792, 12793, 12798, 12799, 12800, and 12802. United States Court of Appeals for the Ninth Circuit. Oregon-Washington Plywood Company Petitioner, vs. Federal Trade Commission, Respondent. Wheeler, Osgood Co., Petitioner, vs. Federal Trade Commission, Respondent. Northwest Door Company, Petitioner, vs. Federal Trade Commission, Respondent. Washington Veneer Corporation, Petitioner, vs. Federal Trade Commission, Respondent. Douglas Fir Plywood Association, et al., Petitioners, vs. Federal Trade Commission, Respondent. Pacific Mutual Door Company, Petitioner, vs. Federal Trade Commission, Respondent. West Coast Plywood Company, Petitioner, vs. Federal Trade Commission, Respondent. M. and M. Wood Working Company, Petitioner, vs. Federal Trade Commission, Respondent. Transcript of Record. Petitions to Set Aside Order of the Federal Trade Commission.

Filed: February 5, 1951.

/s/ PAUL P. O'BRIEN,
Clerk.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 12792

NORTHWEST DOOR COMPANY,

Petitioner,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

PETITION TO REVIEW ORDER OF
FEDERAL TRADE COMMISSION

To the Honorable Judges of the United States Circuit
Court of Appeals for the Ninth Circuit:

Northwest Door Company, petitioner, respectfully represents that it is a corporation duly organized and existing and doing business under and by virtue of the laws of the State of Washington, having its principal office in this Circuit at Tacoma, Pierce County, Washington, where it resides and carries on business.

Petitioner further represents that on October 20, 1950, the Federal Trade Commission, in a certain proceeding entitled "Federal Trade Commission vs. Northwest Door Company, et al., Docket No. 5529," issued an order against Northwest Door Company to cease and desist, a copy of which is hereinafter set forth, which order was served upon the petitioner

by registered mail on or about November 6, 1950.

That said order above referred to, dated October 20, 1950, is as follows:

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, answers thereto filed on behalf of all of the respondents, a memorandum filed by counsel in support of the amended complaint as, for, and in lieu of an opening brief, attached to which memorandum was a proposed form of order to cease and desist which was recommended by counsel in support of the complaint (and, if the Commission should be of the opinion that an order to cease and desist in any form should be issued, by counsel for the respondents, also), briefs and memoranda filed on behalf of certain of the respondents, a reply brief of counsel in support of the complaint, and oral argument before the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondents (except Buf-felen Manufacturing Co.) have violated the provisions of the Federal Trade Commission Act:

It Is Ordered that the respondent, Douglas Fir Plywood Association, a corporation, its officers, members of its management committee, and its agents, representatives and employees, the respondent, Douglas Fir Plywood Information Bureau, a voluntary organization, and its officers, agents, representatives and employees, the corporate respondents, Associated Plywood Mills, Inc., Elliott Bay Mill Company, Harbor Plywood Corporation, M & M Wood Working Company, Northwest Door

Company, Oregon-Washington Plywood Company, United States Plywood Corporation, Vancouver Plywood & Veneer Company, Washington Veneer Company, West Coast Plywood Company, Anacortes Veneer, Inc., and The Wheeler, Osgood Co., individually and as members of and subscribers to said respondent association, and their respective officers, agents, representatives and employees, the corporate respondents, Robinson Plywood and Timber Company, Pacific Mutual Door Company, and Weyerhaeuser Sales Company, and their respective officers, agents, representatives and employees, and the respondent, Wallace E. Difford, an individual, and his agents, representatives and employees, in or in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of plywood products, do forthwith cease and desist from entering into, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination or conspiracy between or among any two or more of said respondents, or between or among any one or more of said respondents and other producers or sole distributors of plywood products for other producers not parties hereto, to do or perform any of the following acts or things:

1. Fixing, establishing or maintaining uniform prices, and in connection therewith, uniform discounts, terms or conditions of sale for any kind or grade of Douglas Fir Plywood, or in any manner fixing or establishing any prices, and in connection

therewith, discounts, terms, or conditions for sale of such plywood;

2. Restricting or curtailing the production of Douglas Fir Plywood;

3. Compiling, exchanging, or disseminating, between and among members of or subscribers to the respondent association statistical information in respect to the production, sales, shipments, and orders on hand of Douglas Fir Plywood, or any one thereof, unless such statistical information as is made available to members or subscribers is readily, fully, and on reasonable terms made available to the purchasing and distributing trade, and where the identity of the manufacturer, seller, or purchaser cannot be determined through such information, and which has not the capacity or tendency of aiding in securing compliance with announced prices, terms, or conditions of sale;

4. Preparing, adopting, or using any basic price list at which Douglas Fir Plywood is to be sold which contains uniform net extras or additions to be charged thereon, or the preparation, adoption or use of uniform net extras or additions in conjunction with a basic price list;

5. Preparing, maintaining, or circulating any list or classification of buyers of Douglas Fir Plywood considered or recognized by respondents as "jobbers," "wholesalers," or "dealers," or any similar list or classification of buyers; provided that nothing contained in this Paragraph 5 shall prevent

the respondent association from maintaining mailing lists of buyers and distributors of Douglas Fir Plywood when the Association shows that such lists are solely for trade promotion purposes;

6. Adopting and using a plan of distribution which includes one or more of the following:

(a) Issuance of a uniform net dealers' price list carrying uniform prices on different quantities and a uniform cash discount;

(b) Adoption of uniform definitions of classes of buyers, and providing for the granting of a uniform discount under uniform prescribed conditions as to who may receive and under what conditions same may be granted;

7. Adopting and using any plan which includes a classification of buyers of Douglas Fir Plywood on the basis of entitlement to price or discount, or communicating to producers or distributors of such plywood conclusions and findings in reference to such classification;

8. Selling only on a delivered price basis, and in conjunction therewith:

(a) Computing the rail freight rate from any point other than the point of origin of the shipment;

(b) Using a uniform schedule of estimated weights;

(c) Adding a uniform net addition on sales made in the primary market;

9. Refusing to ship to East Coast and Gulf points on any basis other than a C.I.F. basis with uniform net additions to the ocean freight rate.

It Is Further Ordered that nothing contained herein shall be deemed to affect lawful relations, including purchase and sale contracts or transactions, among the several respondents, or between a respondent and its subsidiaries, or between subsidiaries of a respondent, or between any one or more of said respondents and any others not parties hereto, and not in unlawful restraint of trade.

It Is Further Ordered, for reasons appearing in the Commission's findings as to the facts in this proceeding, that the amended complaint herein be, and it hereby is, dismissed as to the respondent, Harrison Clark, in his individual capacity, it being understood, however, that said amended complaint is not being dismissed as against the said Harrison Clark as an officer of the respondent, Douglas Fir Plywood Association.

It Is Further Ordered that the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

Petitioner files this petition to obtain a review of the aforesaid order to cease and desist so entered by the Federal Trade Commission on October 20, 1950, in its proceeding under Docket No. 5529 of the records of said Federal Trade Commission.

That said order to cease and desist should be set

aside for the reason that the matters and things referred to therein have not been practiced by this petitioner since 1941.

For the further reason that the matters and things therein complained about were imposed upon the industry of which petitioner is a part by governmental authority, acting under the National Recovery Act.

That the order of the Commission dated October 20, 1950, is uncertain, confusing and impossible of compliance.

Wherefore, Petitioner prays that a certified copy of this petition be served therewith by the Clerk of this Court upon said Federal Trade Commission, requiring said Federal Trade Commission in conformity with the statute to certify and file in this Court a transcript of the entire record in this proceeding aforesaid wherein said order of October 20, 1950, was entered, and that upon review of said order by this honorable Court, the said order of the Federal Trade Commission be set aside.

Dated this 20th day of December, 1950.

NORTHWEST DOOR
COMPANY,

By /s/ E. N. EISENHOWER,
Its Attorney.

[Endorsed]: Filed December 26, 1950.

[An identical Petition to Review Order of Federal Trade Commission was filed December 26, 1950, by The Wheeler, Osgood Co.]

In the United States Court of Appeals
for the Ninth Circuit

No. 12793

WASHINGTON VENEER CORPORATION,
Successor to WASHINGTON VENEER COM-
PANY,

Petitioner,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

PETITION TO REVIEW AND SET ASIDE
ORDER OF FEDERAL TRADE COMMIS-
SION

To the Honorable Judges of the United States Court
of Appeals for the Ninth Circuit:

Your Petitioner, Washington Veneer Corpora-
tion, respectfully shows:

I.

Petitioner, Washington Veneer Corporation, a
Washington corporation, is the successor to Wash-
ington Veneer Company, a Washington corporation,
named in the Order to Cease and Desist hereinafter
described. Said Washington Veneer Corporation is
a corporation organized and existing under the laws
of the State of Washington with its principal place
of business at Olympia, State of Washington, and
is now and at all times hereinafter mentioned was
carrying on business in the State of Washington.

II.

On March 1, 1948, the respondent issued its complaint in the matter of Douglas Fir Plywood Association, et al., Federal Trade Commission Docket No. 5529, and thereafter served said complaint upon this petitioner's predecessor as well as other respondents named in said complaint. On May 19th, 1949, respondent issued its amended complaint in said matter and thereafter served the same upon this petitioner's predecessor as well as other respondents named in said complaint. Said complaint and amended complaint charged said respondents with the use of unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act, Title 15, U.S.C., Sec. 45. Thereafter and on June 8th, 1949, this petitioner's predecessor filed its answer in said proceeding, a copy of which answer is set forth as "Exhibit A" hereto and by reference made a part hereof, admitting in said answer the material allegations of the complaint as being true only for a period sometime between May, 1935, and August, 1941, and not otherwise, and reserving the right to a hearing with oral argument and the filing of briefs with the respondent Federal Trade Commission, as to what order, if any, should be issued.

Thereafter, upon request to the Trial Examiner to close the record for the reception of testimony and other evidence, the Trial Examiner, theretofore designated and appointed in said matter, entered his order, under date of September 30, 1949, closing

the reception of evidence and all other proceedings before Trial Examiner.

That the amended complaint and the so-called "admission" answers stand in the place of or constitute evidence taken under Rule VIII of the Rules of Practice of the Federal Trade Commission. *Century Metalcraft Corporation v. Federal Trade Commission*, 7 Cir., 112 F. 2d, 443; *Hill v. Federal Trade Commission*, 5 Cir., 124 F. 2d, 104. Said amended Complaint and the said "admission" answers together with the Findings and the Order based thereon constitute the entire record in the case.

III.

Thereafter and in accordance with the reservation of rights contained in said answer the petitioner's predecessor filed its written brief with the respondent, the argument being made that no cease and desist order of any kind should be entered in said proceeding because of the long interval of time between the termination of the alleged wrongful practices, sometime between May, 1936, and August, 1941, and the initiation of the proceeding by this respondent, on March 1, 1948. Thereupon, on April 19, 1950, said matter was orally argued before the Federal Trade Commission, petitioner urging that because of the lapse of almost seven years of time between the termination of the alleged wrongful practices, sometime between May, 1935, and August, 1941, and the initiation of this proceeding by this respondent on March 1, 1948, no order of any kind should be entered.

IV.

Under date of October 20th, 1950, the Federal Trade Commission entered in said matters its "Findings as to the Facts and Conclusion" prefaced with the following recital:

"FINDINGS AS TO THE FACTS AND
CONCLUSION

"Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 19, 1949, issued and subsequently served upon the respondents named in the caption hereof its amended complaint in this proceeding charging said respondents with the use of unfair methods of competition in commerce in violation of the provisions of that Act. On June 8, 1949, each of the respondents filed its separate answer to said amended complaint, in which answers all of the respondents, except Northwest Door Company, Anacortes Veneer, Inc., and Weyerhaeuser Sales Company, for the purposes of this proceeding, admitted all of the material allegations of fact set forth in the amended complaint and waived all intervening procedure and further hearings as to said facts, the admissions in the answers of Northwest Door Company, Anacortes Veneer, Inc., and Weyerhaeuser Sales Company being limited to certain portions of said allegations, but each of the answers providing that the admissions contained therein should be taken to mean that the understanding, agreement, combination, conspiracy and planned common course of action alleged in Paragraph Seven of the amended com-

plaint existed and continued only for a substantial portion of the period of time between May, 1935, and August 1, 1941. In said answers each of the respondents reserved the right to file a brief and present oral argument before the Commission as to what order, if any, should be issued upon the facts admitted. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the amended complaint, the aforesaid answers of the respondents, a memorandum proposing disposition of the case filed by counsel in support of the amended complaint as, for, and in lieu of a brief, attached to which memorandum was a proposed form of order to cease and desist which was recommended to the Commission by counsel, in support of the amended complaint (and, if the Commission should be of the opinion that an order to cease and desist in any form should be issued, by counsel for the respondents, also), briefs and memoranda filed on behalf of certain of the respondents, and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn **therefrom."**

and entered an order to cease and desist directed against this petitioner as well as others named therein, which order omitting the caption is attached as "Exhibit B" and by reference made a part hereof.

V.

The respondent Federal Trade Commission was in error in entering any order to cease and desist. There was no finding, or pleading upon which to base such a finding, of any wrongful or illegal action subsequent to August 1, 1941, and due to the long lapse of time intervening between said date of August 1, 1941, and the initiation of proceedings by the respondent herein on March 1, 1948, and the entry of said order, on October 20, 1950, no cease and desist order of any kind should have been issued; and was in error in concluding in Paragraph Nine of the Findings of Fact that the results of the said understanding have been "and now are" to violate the Federal Trade Commission Act in various particulars since the Commission had already found in Paragraph Seven of the Findings, the only finding that could be made on the record, namely, that the alleged illegal conduct occurred sometime between May, 1935, and August 1, 1941.

Wherefore petitioner prays that the aforesaid cease and desist order entered by the respondent against this petitioner be set aside.

/s/ W. E. EVENSON,

/s/ WILLARD E. SKEEL,

Of Attorneys for Washington
Vencer Corporation.

EXHIBIT A

United States of America
Before Federal Trade Commission

Docket No. 5529

In the Matter of:

DOUGLAS FIR PLYWOOD ASSOCIATION, a
Corporation, et al.

AMENDED ANSWER OF RESPONDENT
WASHINGTON VENEER COMPANY, A
CORPORATION, TO AMENDED COM-
PLAINT

Comes now Washington Veneer Company, a corporation, one of the respondents in the above-captioned proceeding, and for amended and substituted answer to the amended complaint, answers as follows:

In order to expedite this proceeding and to prevent the business disorganization consequent upon litigation, and expense incident to trial, respondent Washington Veneer Company comes by its attorneys, Skeel, McKelvy, Henke, Evenson & Uhlmann, and answering the amended complaint in this proceeding, states that it admits all of the material allegations of fact set forth in said complaint, provided this admission be taken to mean that the understanding, agreement, combination, conspiracy and planned common course of action alleged in Paragraph Seven of the amended complaint existed and continued only for a substantial part of the

period of time charged in the amended complaint, to wit, for a substantial part of the period between May, 1935, to August 1, 1941, and not otherwise, and, except to the extent of such admission, denies all of the material allegations of fact set forth in the complaint, and waives all intervening procedure and further hearing as to the said facts.

Any and all admissions of fact made by respondent herein are made solely for the purpose of this proceeding, the enforcement or review thereof in the Circuit Court of Appeals, and for any review in the Supreme Court of the United States, or for any other proceeding in enforcement of the order to be entered herein, or to recover any penalty for violation thereof which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act as amended, and for no other purpose, but reserving the right of a hearing with oral argument and filing of briefs before the Commission as to what order, if any, should be issued upon the facts hereby admitted.

.....,
(W. E. Evenson)

.....,
(Willard E. Skeel)

Of Attorneys for Washington
Veneer Company.

Office and Post Office Address:
914 Insurance Building,
Seattle 4, Washington.
Eliot 1031.

.....,
 Alfred J. Schweppe, One of Attorneys for Respond-
 ent Washington Veneer Company.

Office and Post Office Address:
 657 Colman Building,
 Seattle 4, Washington.
 Eliot 7520.

State of Washington,
 County of King—ss.

I, Victor Olson, being first duly sworn, say that I am President of Washington Veneer Company, one of the respondents in the within-entitled cause, and the foregoing is true as I verily believe.

VICTOR OLSON.

Subscribed and sworn to before me this 28th day of April, 1949.

E. F. CANADAY,
 Notary Public in and for the State of Washington,
 Residing at Seattle.

EXHIBIT B

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, answers thereto filed on behalf of all of the respondents, a memorandum filed by counsel in support of the amended complaint as, for, and in lieu of an opening brief, attached to which memorandum was a proposed form of order to cease

and desist which was recommended by counsel in support of the complaint (and, if the Commission should be of the opinion that an order to cease and desist in any form should be issued, by counsel for the respondents, also), briefs and memoranda filed on behalf of certain of the respondents, a reply brief of counsel in support of the complaint, and oral argument before the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondents (except Buffelen Manufacturing Co.) have violated the provisions of the Federal Trade Commission Act:

It Is Ordered that the respondent, Douglas Fir Plywood Association, a corporation, its officers, members of its management committee, and its agents, representatives and employees; the respondent, Douglas Fir Plywood Information Bureau, a voluntary organization, and its officers, agents, representatives and employees; the corporate respondents, Associated Plywood Mills, Inc.; Elliott Bay Mill Company, Harbor Plywood Corporation, M & M Wood Working Company, Northwest Door Company, Oregon-Washington Plywood Company, United States Plywood Corporation, Vancouver Plywood & Veneer Company, Washington Veneer Company, West Coast Plywood Company, Anacortes Veneer, Inc., and The Wheeler, Osgood Co., individually and as members of and subscribers to said respondent association, and their respective officers, agents, representatives and employees; the corporate respondents, Robinson Plywood and Timber Company, Pacific Mutual Door Company, and

Weyerhaeuser Sales Company, and their respective officers, agents, representatives and employees; and the respondent, Wallace E. Difford, an individual, and his agents, representatives and employees, in or in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of plywood products, do forthwith cease and desist from entering into, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination or conspiracy between or among any two or more of said respondents, or between or among any one or more of said respondents and other producers or sole distributors of plywood products for other producers not parties hereto, to do or perform any of the following acts or things:

1. Fixing, establishing or maintaining uniform prices, and in connection therewith, uniform discounts, terms or conditions of sale for any kind or grade of Douglas Fir Plywood, or in any manner fixing or establishing any prices, and in connection therewith, discounts, terms, or conditions for sale of such plywood;

2. Restricting or curtailing the production of Douglas Fir Plywood;

3. Compiling, exchanging, or disseminating, between and among members of or subscribers to the respondent association statistical information in respect to the production, sales, shipments, and orders on hand of Douglas Fir Plywood, or any

one thereof, unless such statistical information as is made available to members or subscribers is readily, fully, and on reasonable terms made available to the purchasing and distributing trade, and where the identity of the manufacturer, seller, or purchaser cannot be determined through such information, and which has not the capacity or tendency of aiding in securing compliance with announced prices, terms, or conditions of sale;

4. Preparing, adopting, or using any basic price list at which Douglas Fir Plywood is to be sold which contains uniform net extras or additions to be charged thereon, or the preparation, adoption or use of uniform net extras or additions in conjunction with a basic price list;

5. Preparing, maintaining, or circulating any list or classification of buyers of Douglas Fir Plywood considered or recognized by respondents as "jobbers," "wholesalers," or "dealers," or any similar list or classification of buyers; provided that nothing contained in this Paragraph 5 shall prevent the respondent association from maintaining mailing lists of buyers and distributors of Douglas Fir Plywood when the Association shows that such lists are solely for trade promotion purposes;

6. Adopting and using a plan of distribution which includes one or more of the following:

(a) Issuance of a uniform net dealers' price list carrying uniform prices on different quantities and a uniform cash discount;

(b) Adoption of uniform definitions of classes of buyers, and providing for the granting of a uniform discount under uniform prescribed conditions as to who may receive and under what conditions same may be granted;

7. Adopting and using any plan which includes a classification of buyers of Douglas Fir Plywood on the basis of entitlement to price or discount, of communicating to producers or distributors of such plywood conclusions and findings in reference to such classification;

8. Selling only on a delivered price basis, and in conjunction therewith:

(a) Computing the rail freight rate from any point other than the point of origin of the shipment;

(b) Using a uniform schedule of estimated weights;

(c) Adding a uniform net addition on sales made in the primary market;

9. Refusing to ship to East Coast and Gulf points on any basis other than a C.I.F. basis with uniform net additions to the ocean freight rate.

It Is Further Ordered that nothing contained herein shall be deemed to affect lawful relations, including purchase and sale contracts or transactions, among the several respondents, or between a respondent and its subsidiaries, or between subsidiaries or a respondent, or between any one or more of said respondents and any others not parties

In the United States Court of Appeals
for the Ninth Circuit

No. 12798

DOUGLAS FIR PLYWOOD ASSOCIATION, a Corporation; DOUGLAS FIR PLYWOOD INFORMATION BUREAU, a Voluntary Organization; ANACORTES VENEER, INC., a Corporation; ASSOCIATED PLYWOOD MILLS, INC., a Corporation; ELLIOTT BAY MILL COMPANY, a Corporation; HARBOR PLYWOOD CORPORATION, a Corporation; UNITED STATES PLYWOOD CORPORATION, a Corporation; VANCOUVER PLYWOOD & VENEER, INC., a Corporation; ROBINSON PLYWOOD AND TIMBER COMPANY, a Corporation; WEYERHAEUSER SALES COMPANY, a Corporation; and WALLACE E. DIFFORD,

Petitioners,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

PETITION TO REVIEW AND SET ASIDE
ORDER OF FEDERAL TRADE COMMISSION

To the Honorable Judges of the United States Court
of Appeals for the Ninth Circuit:

Your Petitioners, above named, respectfully show:

I.

Petitioner Douglas Fir Plywood Association is a

corporation organized and existing under the laws of the State of Washington, with its principal place of business at Tacoma, State of Washington, and is now carrying on business in the State of Washington; Petitioner Douglas Fir Plywood Information Bureau is a voluntary organization, with its principal place of business at Tacoma, State of Washington, and is now carrying on business in the State of Washington; Petitioner Anacortes Veneer, Inc., is a corporation organized and existing under the laws of the State of Washington, with its principal place of business at Anacortes, State of Washington, and is now carrying on business in the State of Washington; Petitioner Associated Plywood Mills, Inc., is a corporation organized and existing under the laws of the State of Washington, with its principal place of business at Eugene, State of Oregon, and is now carrying on business in the State of Oregon; Petitioner Elliott Bay Mill Company is a corporation organized and existing under the laws of the State of Washington, with its principal place of business at Seattle, State of Washington, and is now carrying on business in the State of Washington; Petitioner Harbor Plywood Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at Hoquiam, State of Washington, and is now carrying on business in the State of Washington; Petitioner United States Plywood Corporation is a corporation organized and existing under the laws of the State of New York, with its principal place of business at New York City, State of New York, and is now carrying on

business in the State of Washington; Petitioner Vancouver Plywood & Veneer, Inc., is a corporation organized and existing under the laws of the State of Washington, with its principal place of business at Vancouver, State of Washington, and is now carrying on business in the State of Washington; Petitioner Robinson Plywood and Timber Company is a corporation organized and existing under the laws of the State of Washington, with its principal place of business at Everett, State of Washington, and is now carrying on business in the State of Washington; Petitioner Weyerhaeuser Sales Company is a corporation organized and existing under the laws of the State of Washington, with its principal place of business at Tacoma, State of Washington, and is now carrying on business in the State of Washington; Petitioner Wallace E. Difford is an individual residing in Pierce County, State of Washington.

II.

On March 1, 1948, the respondent issued its complaint in the matter of Douglas Fir Plywood Association, et al., Federal Trade Commission Docket No. 5529, and thereafter served said complaint upon these petitioners as well as other respondents named in said complaint. On May 19, 1949, respondent issued its amended complaint in said matter, and thereafter served the same upon these petitioners as well as other respondents named in said amended complaint. Said complaint and amended complaint charged said respondents with the use of unfair methods of competition in commerce in violation

of the provisions of the Federal Trade Commission Act, Title 15, U.S.C., Sec. 45. Thereafter, and on June 8, 1949, these petitioners, excepting Anacortes Veneer, Inc., filed their answers in said proceeding admitting in said answers the material allegations of the complaint as being true only for a substantial part of the period of time between May, 1935, and August 1, 1941, and not otherwise, and reserving the right to a hearing with oral argument and the filing of briefs with the respondent, Federal Trade Commission, as to what order, if any, should be issued. Anacortes Veneer, Inc., on June 8, 1949, filed its answer in said proceeding, which answer admitted Paragraph Two, Subparagraph (13) of the amended complaint, and denied the other allegations of the complaint. The answer of Weyerhaeuser Sales Company admitted only part of the allegations of the amended complaint. The answer of Wallace E. Difford admitted the material allegations of the complaint as being true only for a substantial part of the period of time between March 8, 1938, and August 1, 1941.

Thereafter, upon request to the Trial Examiner to close the record for the reception of testimony and other evidence, the Trial Examiner, theretofore designated and appointed in said matter, entered his order, under date of September 30, 1949, closing the reception of evidence and all other proceedings before Trial Examiner, a copy of which order is attached hereto as Exhibit "A" and by reference made a part hereof.

That the amended complaint and the so-called

“admission” answers stand in the place of or constitute evidence taken under Rule VIII of the Rules of Practice of the Federal Trade Commission. *Century Metalcraft Corporation v. Federal Trade Commission*, 7 Cir., 112 F. 2d, 443; *Hill v. Federal Trade Commission*, 5 Cir., 124 F. 2d, 104. Said amended complaint and the said “admission” answers together with the Findings and the Order based thereon constitute the entire record in the case.

III.

Thereupon counsel for the respondent Federal Trade Commission filed its “Memorandum Proposing Disposition” of said matter. Thereafter, and in accordance with the reservation of rights contained in said answer, the petitioners filed their written briefs with the respondent, the argument being made that no cease and desist order of any kind should be entered in said proceeding because of the long interval of time between the termination of the alleged wrongful practices, sometime between May, 1935, and August 1, 1941, and the initiation of the proceeding by this respondent, on March 1, 1948. Thereupon, on April 19, 1950, said matter was orally argued before the Federal Trade Commission, petitioners urging that because of the lapse of almost seven years of time between the termination of the alleged wrongful practices, sometime between May, 1935, and August, 1941, and the initiation of this proceeding by this respondent on March 1, 1948, no order of any kind should be entered.

IV.

Under date of October 20, 1950, the Federal Trade

Commission entered in said matter its "Findings as to the Facts and Conclusions" prefaced with the following recital:

"Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 19, 1949, issued and subsequently served upon the respondents named in the caption hereof its amended complaint in this proceeding, charging said respondents with the use of unfair methods of competition in commerce in violation of the provisions of that Act. On June 8, 1949, each of the respondents filed its separate answer to said amended complaint, in which answers all of the respondents, except Northwest Door Company, Anacortes Veneer, Inc., and Weyerhaeuser Sales Company, for the purposes of this proceeding, admitted all of the material allegations of fact set forth in the amended complaint and waived all intervening procedure and further hearings as to said facts, the admissions in the answers of Northwest Door Company, Anacortes Veneer, Inc., and Weyerhaeuser Sales Company being limited to certain portions of said allegations, but each of the answers providing that the admissions contained therein should be taken to mean that the understanding, agreement, combination, conspiracy and planned common course of action alleged in Paragraph Seven of the amended complaint existed and continued only for a substantial portion of the period of time between May, 1935, and August 1, 1941. In said answers each of the respondents reserved the right to file a brief and present oral argument before the Commission as to what order,

if any, should be issued upon the facts admitted. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the amended complaint, the aforesaid answers of the respondents, a memorandum proposing disposition of the case filed by counsel in support of the amended complaint as, for, and in lieu of a brief, attached to which memorandum was a proposed form of order to cease and desist which was recommended to the Commission by counsel in support of the amended complaint (and, if the Commission should be of the opinion that an order to cease and desist in any form should be issued, by counsel for the respondents, also), briefs and memoranda filed on behalf of certain of the respondents, and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom."

and entered an order to cease and desist directed against these petitioners as well as others named therein, which order, omitting the caption and preamble, is attached hereto as Exhibit "B" and by reference made a part hereof.

V.

The respondent Federal Trade Commission was in error in entering any order to cease and desist. There was no finding, or pleading upon which to base such a finding, of any wrongful or illegal action

subsequent to August 1, 1941, and due to the long lapse of time intervening between said date of August 1, 1941, and the initiation of proceedings by the respondent herein on March 1, 1948, and the entry of said order on October 20, 1950, no cease and desist order of any kind should have been issued; and was in error in concluding in Paragraph Nine of the Findings of Fact that the results of the said understanding have been "and now are" to violate the Federal Trade Commission Act in various particulars since the Commission had already found in Paragraph Seven of the Findings, the only finding that could be made on the record, namely, that the alleged illegal conduct occurred for some time during a substantial part of the period of time between May, 1935, and August 1, 1941.

Wherefore, petitioners pray that the aforesaid cease and desist order entered by the respondent against these petitioners be set aside.

McMICKEN, RUPP &
SCHWEPPE,

/s/ ALFRED J. SCHWEPPE,

/s/ M. A. MARQUIS,

Attorneys for Petitioners Douglas Fir Plywood Association; Douglas Fir Plywood Information Bureau; Anacortes Veneer, Inc.; Associated Plywood Mills, Inc.; Elliott Bay Mill Company; Harbor Plywood Corporation; United States Plywood Corporation; Vancouver Plywood & Veneer, Inc.; Robinson Plywood and Timber Company; Weyerhaeuser Sales Company, and Wallace E. Difford.

KRAUSE, HIRSCH, LEVIN &
HEILPERN,

/s/ RAYMOND T. HEILPERN,
Of Counsel for Petitioner, United States Plywood
Corporation.

/s/ J. E. NOLAN,

BRIGGS, GILBERT, MORTON,
KYLE & MACARTNEY,

/s/ J. NEIL MORTON,
Of Counsel for Petitioner, Weyerhaeuser Sales
Company.

EXHIBIT A

United States of America
Before Federal Trade Commission

Docket No. 5529

In the Matter of:

DOUGLAS FIR PLYWOOD ASSOCIATION,
et al.

ORDER CLOSING RECEPTION OF EVI-
DENCE AND ALL OTHER PROCEEDINGS
BEFORE TRIAL EXAMINER

Whereas, counsel for the respective parties to this proceeding have stated for the record that they do not desire to introduce any testimony or other evidence in support of or in opposition to the complaint herein; and the various respondents named in the

amended complaint have by their answers admitted all the material allegations of fact therein set forth, as existing and continuing for a substantial part of the period between May, 1935, and August 1, 1941, and have waived all intervening procedure and further hearing as to said facts, reserving the right of a hearing with oral argument and filing of briefs before the Commission as to what order, if any, should be issued upon the facts thus admitted;

And Whereas, it appears from the premises that no further action is required of the Trial Examiner and, no proofs or other matters being submitted to him for rulings or adjudication, there is no basis for a recommended decision herein; it is therefore

Ordered that the taking of testimony, receipt of evidence and all other proceedings in the above matter before this Trial Examiner are hereby closed.

This at Washington, D. C., September 30, 1949.

/s/ CLYDE M. HADLEY,
Trial Examiner.

EXHIBIT B

It Is Ordered that the respondent, Douglas Fir Plywood Association, a corporation, its officers, members of its management committee, and its agents, representatives and employees, the respondent, Douglas Fir Plywood Information Bureau, a voluntary organization, and its officers, agents, representatives, and employees, the corporate respondents, Associated Plywood Mills, Inc., Elliott Bay

Mill Company, Harbor Plywood Corporation, M & M Wood Working Company, Northwest Door Company, Oregon-Washington Plywood Company, United States Plywood Corporation, Vancouver Plywood & Veneer Company, Washington Veneer Company, West Coast Plywood Company, Anacortes Veneer, Inc., and The Wheeler, Osgood Co., individually and as members of and subscribers to said respondent association, and their respective officers, agents, representatives and employees, the corporate respondents, Robinson Plywood and Timber Company, Pacific Mutual Door Company and Weyerhaeuser Sales Company, and their respective officers, agents, representatives and employees, and the respondent, Wallace E. Difford, an individual, and his agents, representatives and employees, in or in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of Plywood products, do forthwith cease and desist from entering into, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination or conspiracy between or among any two or more of said respondents, or between or among any one or more of said respondents and other producers or sole distributors of plywood products for other producers not parties hereto, to do or perform any of the following acts or things:

1. Fixing, establishing or maintaining uniform prices, and in connection therewith, uniform dis-

counts, terms or conditions of sale for any kind or grade of Douglas Fir Plywood, or in any manner fixing or establishing any prices, and in connection therewith, discounts, terms, or conditions for sale of such plywood;

2. Restricting or curtailing the production of Douglas Fir Plywood;

3. Compiling, exchanging, or disseminating, between and among members of or subscribers to the respondent association statistical information in respect to the production, sales, shipments, and orders on hand of Douglas Fir Plywood, or any one thereof, unless such statistical information as is made available to members or subscribers is readily, fully, and on reasonable terms made available to the purchasing and distributing trade, and where the identity of the manufacturer, seller, or purchaser cannot be determined through such information, and which has not the capacity or tendency of aiding in securing compliance with announced prices, terms, or conditions of sale;

4. Preparing, adopting, or using any basic price list at which Douglas Fir Plywood is to be sold which contains uniform net extras or additions to be charged thereon, or the preparation, adoption or use of uniform net extras or additions in conjunction with a basic price list;

5. Preparing, maintaining, or circulating any list or classification of buyers of Douglas Fir Plywood considered or recognized by respondents as "jobbers," "wholesalers," or "dealers," or any

similar list or classification of buyers; provided that nothing contained in this Paragraph 5 shall prevent the respondent association from maintaining mailing lists of buyers and distributors of Douglas Fir Plywood when the Association shows that such lists are solely for trade promotion purposes;

6. Adopting and using a plan of distribution which includes one or more of the following:

(a) Issuance of a uniform net dealers' price list carrying uniform prices on different quantities and a uniform cash discount;

(b) Adoption of uniform definitions of classes of buyers, and providing for the granting of a uniform discount under uniform prescribed conditions as to who may receive and under what conditions same may be granted;

7. Adopting and using any plan which includes a classification of buyers of Douglas Fir Plywood on the basis of entitlement to price or discount, or communicating to producers or distributors of such plywood conclusions and findings in reference to such classification;

8. Selling only on a delivered price basis, and in conjunction therewith;

(a) Computing the rail freight rate from any point other than the point of origin of the shipment;

(b) Using a uniform schedule of estimated weights;

(c) Adding a uniform net addition on sales made in the primary market;

In the United States Court of Appeals
for the Ninth Circuit

No. 12799

PACIFIC MUTUAL DOOR COMPANY, a Corporation,

Petitioner,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

PETITION TO REVIEW AND SET ASIDE
ORDER OF FEDERAL TRADE COMMISSION

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

Your Petitioner, the Pacific Mutual Door Company, respectfully shows:

I.

Petitioner is a corporation organized and existing under the laws of the State of Washington with its principal place of business at Tacoma, State of Washington, and is now and at all times hereinafter mentioned was carrying on business in the State of Washington.

II.

On March 1, 1948, the Respondent issued its Complaint in the matter of Douglas Fir Plywood Associates, et al., Federal Trade Commission Docket No. 5529 and thereafter served said Complaint upon

this Petitioner as well as other Respondents named in said Complaint. On May 19th, 1949, Respondent issued its amended Complaint in said matter and thereafter served the same upon this Petitioner as well as other Respondents named in said amended Complaint. Said Complaint and amended Complaint charged said Respondents with the use of unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act, Title 15 U.S.C. Sec. 45. Thereafter, on June 8, 1949, this Petitioner filed its answer in said proceeding, a copy of which Answer is set forth as Exhibit "A" hereto and by this reference made a part hereof, admitting in said Answer the material allegations of the Complaint as being true only for a period sometime between May, 1935, and August, 1941, and not otherwise, and reserving the right to a hearing with oral argument and the filing of briefs with the Respondent, Federal Trade Commission, as to what order, if any, should be issued.

Thereafter, upon request to the Trial Examiner to close the record for the reception of testimony and other evidence, the Trial Examiner, theretofore designated and appointed in said matter, entered his order, under date of September 30, 1949, closing the reception of evidence and all other proceedings before the Trial Examiner.

That the Amended Complaint and the so-called "admission" Answer stand in the place of or constitute evidence taken under Rule VIII of the Rules of Practice of the Federal Trade Commission. *Century Metalcraft Corporation v. Federal Trade Com-*

mission, 7 Cir., 112 F2d. 443; Hill v. Federal Trade Commission, 5 Cir., 124 F2d. 104. Said Amended Complaint and the said "admission" Answer, together with the Findings and the Order based thereon, constitute the entire record in the case.

III.

Thereafter, in accordance with the reservation of rights contained in said Answer, the Petitioner, under a letter dated the 5th day of December, 1949, and addressed to the Federal Trade Commission, Washington 25, D. C., said letter having been deposited in the United States mail at Tacoma, Washington, on the 5th day of December, 1949, adopted the Brief served and filed by the law firm of McMicken, Rupp & Schweppe, and Alfred J. Schweppe on behalf of the Respondent, Douglas Fir Plywood, and all Respondents generally, as its brief to the Federal Trade Commission in said cause, Docket No. 5529. That in said Brief, the argument was made that no cease and desist order of any kind should be entered in said proceeding because of the long interval of time between the termination of the alleged wrongful practices, sometime between May, 1935, and August, 1941, and the initiation of the proceedings by this Respondent on March 1, 1948. Thereupon, on April 19, 1950, said matter was orally argued before the Federal Trade Commission, it being urged on behalf of the Petitioner that because of the lapse of almost seven (7) years of time between the termination of the alleged wrongful practices, sometime between May, 1935, and August, 1941, and the initiation of this pro-

ceeding by this Respondent on March 1, 1948, no order of any kind should be entered.

IV.

Under date of October 20, 1950, the Federal Trade Commission entered in said matter its "Findings as to the Facts and Conclusion" prefaced with the following recital:

FINDINGS AS TO THE FACTS AND CONCLUSION

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 19, 1949, issued and subsequently served upon the respondents named in the caption hereof its amended complaint in this proceeding, charging said respondents with the use of unfair methods of competition in commerce in violation of the provisions of that Act. On June 8, 1949, each of the respondents filed its separate answer to said amended complaint, in which answers all of the respondents, except Northwest Door Company, Anacortes Veneer, Inc., and Weyerhaeuser Sales Company, for the purposes of this proceeding, admitted all of the material allegations of fact set forth in the amended complaint and waived all intervening procedure and further hearings as to said facts, the admissions in the answers of Northwest Door Company, Anacortes Veneer, Inc., and Weyerhaeuser Sales Company being limited to certain portions of said allegations, but each of the answers providing that the admissions contained

therein should be taken to mean that the understanding, agreement, combination, conspiracy and planned common course of action alleged in Paragraph Seven of the amended complaint existed and continued only for a substantial portion of the period of time between May, 1935, and August 1, 1941. In said answers each of the respondents reserved the right to file a brief and present oral argument before the Commission as to what order, if any, should be issued upon the facts admitted. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the amended complaint, the aforesaid answers of the respondents, a memorandum proposing disposition of the case filed by counsel in support of the amended complaint as, for, and in lieu of a brief, attached to which memorandum was a proposed form of order to cease and desist which was recommended by counsel to the Commission in support of the amended complaint (and, if the Commission should be of the opinion that an order to cease and desist in any form should be issued, by counsel for the respondents, also), briefs and memoranda filed on behalf of certain of the respondents, and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom."

and entered an order to cease and desist directed against this Petitioner as well as others named

therein, which order, omitting the caption, is attached hereto as Exhibit "B," and by reference made a part hereof.

V.

The Respondent, Federal Trade Commission, was in error in entering any order to cease and desist. There was no finding, or pleading upon which to base such a finding, of any wrongful or illegal action subsequent to August 1, 1941, and due to the long lapse of time intervening between said date of August 1, 1941, and the initiation of proceedings by the Respondent herein on March 1, 1948, and the entry of said order, on October 20, 1950, no cease and desist order of any kind should have been issued; and was in error in concluding in Paragraph Nine of the Findings of Fact that the results of the said understanding have been "and now are" to violate the Federal Trade Commission Act in various particulars since the Commission had already found in paragraph Seven of the Findings, the only finding that could be made on the record, namely that the alleged illegal conduct occurred sometime between May, 1935, and August 1, 1941.

Wherefore Petitioner prays that the aforesaid Cease and Desist Order entered by the Respondent against this Petitioner be set aside.

Dated: December 26, 1950.

/s/ OWEN P. HUGHES,

Attorney for Petitioner Pacific Mutual Door Company.

EXHIBIT "A"

United States of America
Before Federal Trade Commission

Docket No. 5529

In the Matter of
DOUGLAS FIR PLYWOOD ASSOCIATION,
a Corporation, et al.,

ANSWER OF RESPONDENT, PACIFIC MU-
TUAL DOOR COMPANY, A CORPORA-
TION, TO AMENDED COMPLAINT

In order to expedite this proceeding and to prevent the business disorganization consequent upon litigation, and expense incident to trial, respondent Pacific Mutual Door Company, a corporation, comes by its attorney Owen P. Hughes, of the law firm of Neal, Bonneville & Hughes, and answering the amended complaint in this proceeding, states that it admits all of the material allegations of fact set forth in said complaint, provided this admission be taken to mean that the understanding, agreement, combination, conspiracy and planned common course of action alleged in paragraph Seven of the amended complaint existed and continued only for a substantial part of the period of time charged in the amended complaint, to wit, for a substantial part of the period between May, 1935, to August 1, 1941, and not otherwise, and, except to the extent of such admission, denies all of the material allegations of fact set forth in the complaint, and waives

all intervening procedure and further hearing as to the said facts.

Any and all admissions of fact made by respondent herein are made solely for the purpose of this proceeding, the enforcement or review thereof in the Circuit Court of Appeals, and for any review in the Supreme Court of the United States, or for any other proceeding in enforcement of the order to be entered herein, or to recover any penalty for violation thereof which may be brought or instituted by virtue of the authority contained in the Federal Trade Commission Act as amended, and for no other purpose, but reserving the right of a hearing with oral argument and filing of briefs before the Commission as to what order, if any, should be issued upon the facts hereby admitted.

Dated: June 8, 1949.

OWEN P. HUGHES,

Of the Law Firm of Neal, Bonneville & Hughes, Attorney for Respondent, Pacific Mutual Door Company.

EXHIBIT "B"

"Order to Cease and Desist"

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, answers thereto filed on behalf of all of the respondents, a memorandum filed by counsel in support of the amended complaint as, for and in lieu of an opening brief, attached to which

memorandum was a proposed form of order to cease and desist which was recommended by counsel in support of the complaint (and, if the Commission should be of the opinion that an order to cease and desist in any form should be issued, by counsel for the respondents, also), briefs and memoranda filed on behalf of certain of the respondents, a reply brief of counsel in support of the complaint, and oral argument before the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondents (except Buffelen Manufacturing Co.) have violated the provisions of the Federal Trade Commission Act:

It Is Ordered that the respondent, Douglas Fir Plywood Association, a corporation, its officers, members of its management committee, and its agents, representatives and employees; the respondent, Douglas Fir Plywood Information Bureau, a voluntary organization, and its officers, agents, representatives and employees; the corporate respondents, Associated Plywood Mills, Inc., Elliott Bay Mill Company, Harbor Plywood Corporation, M & M Wood Working Company, Northwest Door Company, Oregon-Washington Plywood Company, United States Plywood Corporation, Vancouver Plywood & Veneer Company, Washington Veneer Company, West Coast Plywood Company, Anacortes Veneer, Inc., and The Wheeler, Osgood Co., individually and as members of and subscribers to said respondent association, and their respective officers, agents, representatives and employees, the

corporate respondents, Robinson Plywood and Timber Company, Pacific Mutual Door Company, and Weyerhaeuser Sales Company, and their respective officers, agents, representatives and employees, and the respondent, Wallace E. Difford, an individual, and his agents, representatives and employees, in or in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of plywood products, do forthwith cease and desist from entering into, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination or conspiracy between or among any two or more of said respondents, or between or among any one or more of said respondents and other producers or sole distributors of plywood products for other producers not parties hereto, to do or perform any of the following acts or things:

1. Fixing, establishing or maintaining uniform prices, and in connection therewith, uniform discounts, terms or conditions of sale for any kind or grade of Douglas Fir Plywood, or in any manner fixing or establishing any prices, and in connection therewith, discounts, terms, or conditions for sale of such plywood;

2. Restricting or curtailing the production of Douglas Fir Plywood;

3. Compiling, exchanging, or disseminating, between and among members of or subscribers to the respondent association statistical information

in respect to the production sales, shipments, and orders on hand of Douglas Fir Plywood, or any one thereof, unless such statistical information as is made available to members or subscribers is readily fully, and on reasonable terms made available to the purchasing and distributing trade, and where the identity of the manufacturer, seller, or purchaser cannot be determined through such information, and which has not the capacity or tendency of aiding in securing compliance with announced prices, terms, or conditions of sale;

4. Preparing, adopting, or using any basic price list at which Douglas Fir Plywood is to be sold which contains uniform net extras or additions to be charged thereon, or the preparation, adoption or use of uniform net extras or additions in conjunction with a basic price list;

5. Preparing, maintaining, or circulating any list or classification of buyers of Douglas Fir Plywood considered or recognized by respondents as "jobbers," "wholesalers," or "dealers," or any similar list or classification of buyers; provided that nothing contained in this Paragraph 5 shall prevent the respondent association from maintaining mailing lists of buyers and distributors of Douglas Fir Plywood when the Association shows that such lists are solely for trade promotion purposes;

6. Adopting and using a plan of distribution which includes one or more of the following:

(a) Issuance of a uniform net dealers' price list carrying uniform prices on different quantities and a uniform cash discount;

(b) Adoption of uniform definitions of classes of buyers, and providing for the granting of a uniform discount under uniform prescribed conditions as to who may receive and under what conditions same may be granted;

7. Adopting and using any plan which includes a classification of buyers of Douglas Fir Plywood on the basis of entitlement to price or discount, or communicating to producers or distributors of such plywood conclusions and findings in reference to such classification;

8. Selling only on a delivered price basis, and in conjunction therewith;

(a) Computing the rail freight rate from any point other than the point of origin of the shipment;

(b) Using a uniform schedule of estimated weights;

(c) Adding a uniform net addition on sales made in the primary market;

9. Refusing to ship to East Coast and Gulf points on any basis other than a C.I.F. basis with uniform net additions to the ocean freight rate.

It Is Further Ordered that nothing contained herein shall be deemed to affect lawful relations, including purchase and sale contracts or transactions, among the several respondents, or between a

In The United States Court of Appeals
For The Ninth Circuit

No. 12800

WEST COAST PLYWOOD COMPANY,
a Corporation,

Petitioner,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

PETITION TO REVIEW AND SET ASIDE
ORDER OF FEDERAL TRADE COM-
MISSION

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

Your petitioner, the West Coast Plywood Com-
pany, respectfully shows:

I.

Petitioner is a corporation organized and existing
under the laws of the State of Washington, with
its principal place of business at Aberdeen State
of Washington, and is now and at all times here-
inafter mentioned was carrying on business in the
State of Washington.

II.

On March 1, 1948, the respondent issued its com-
plaint in the matter of Douglas Fir Plywood As-
sociation, et al., Federal Trade Commission Docket
No. 5529, and thereafter served said complaint upon

this petitioner as well as other respondents named in said complaint. On May 19th, 1949, respondent issued its amended complaint in said matter and thereafter served the same upon this petitioner as well as other respondents named in said complaint. Said complaint and amended complaint charged said respondents with the use of unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act, Title 15, U.S.C. Sec. 45. Thereafter and on or about June 8th, 1949, this petitioner filed its answer in said proceeding, admitting in said answer the material allegations of the complaint as being true only for a period sometime between May, 1935, and August, 1941, and not otherwise, and reserving the right to a hearing with oral argument and the filing of briefs with the respondent Federal Trade Commission, as to what order, if any, should be issued.

III.

Thereafter and in accordance with the reservation of rights contained in said answer the petitioner filed its written brief with the respondent, the argument being made that no cease and desist order of any kind should be entered in said proceeding because of the long interval of time between the termination of the alleged wrongful practices, sometime between May, 1935, and August, 1941, and the initiation of the proceeding by this respondent, on March 1, 1948. Thereupon, on April 19, 1950, said matter was orally argued before the Federal Trade Commission, petitioner urging that because

of the lapse of almost seven years of time between the termination of the alleged wrongful practices, sometime between May, 1935, and August, 1941, and the initiation of this proceeding by this respondent on March 1, 1948, no order of any kind should be entered.

IV.

Under date of October 20, 1950, the Federal Trade Commission entered in said matter its "Findings as to the Facts and Conclusion," and entered an order to cease and desist, which order was received by petitioner, West Coast Plywood Company, by registered mail on or about November 6, 1950. Said cease and desist order directed against this petitioner, as well as others named therein, omitting the caption, is attached hereto as Exhibit A, and by reference made a part hereof.

V.

The respondent Federal Trade Commission was in error in entering any order to cease and desist. There was no finding, or pleading upon which to base such a finding, of any wrongful or illegal action subsequent to August 1, 1941, and due to the long lapse of time intervening between said date of August 1, 1941, and the initiation of proceedings by the respondent herein, on March 1, 1948, and the entry of said order, on October 20, 1950, no cease and desist order of any kind should have been issued; and was in error in concluding in Paragraph Nine of the Findings of Fact that the results of the said understanding have been "and now are"

to violate the Federal Trade Commission Act in various particulars since the Commission had already found in Paragraph Seven of the Findings, the only finding that could be made on the record, namely that the alleged illegal conduct occurred sometime between May, 1935, and August 1, 1941.

Wherefore, Petitioner prays that the aforesaid cease and desist order entered by the respondent against this petitioner be set aside.

/s/ THEODORE B. BRUENER,
Attorney for Petitioner.

EXHIBIT A

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, answers thereto filed on behalf of all of the respondents, a memorandum filed by counsel in support of the amended complaint as, for, and in lieu of an opening brief, attached to which memorandum was a proposed form of order to cease and desist which was recommended by counsel in support of the complaint (and, if the Commission should be of the opinion that an order to cease and desist in any form should be issued, by counsel for the respondents, also), briefs and memoranda filed on behalf of certain of the respondents, a reply brief of counsel in support of the complaint, and oral argument before the Commission, and the Commission having made its findings as to the facts and its conclusion that the re-

spondents (except Buffelen Manufacturing Co.) have violated the provisions of the Federal Trade Commission Act:

It Is Ordered that the respondent, Douglas Fir Plywood Association, a corporation, its officers, members of its management committee, and its agents, representatives and employees; the respondent, Douglas Fir Plywood Information Bureau, a voluntary organization, and its officers, agents, representatives and employees, the corporate respondents, Associated Plywood Mills, Inc., Elliott Bay Mill Company, Harbor Plywood Corporation, M & M Wood Working Company, Northwest Door Company, Oregon - Washington Plywood Company, United States Plywood Corporation, Vancouver Plywood & Veneer Company, Washington Veneer Company, West Coast Plywood Company, Anacortes Veneer, Inc., and the Wheeler, Osgood Co., individually and as members of and subscribers to said respondent association, and their respective officers, agents, representatives and employees; the corporate respondents, Robinson Plywood and Timber Company, Pacific Mutual Door Company, and Weyerhaeuser Sales Company, and their respective officers, agents, representatives and employees; and the respondent, Wallace E. Difford, an individual, and his agents, representatives and employees, in or in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of plywood products, do forthwith cease and desist from entering into, cooperating in, or carrying out any

planned common course of action, understanding, agreement, combination or conspiracy between or among any two or more of said respondents, or between or among any one or more of said respondents and other producers or sole distributors of plywood products for other producers not parties hereto, to do or perform any of the following acts or things:

1. Fixing, establishing or maintaining uniform prices, and in connection therewith, uniform discounts, terms or conditions of sale for any kind or grade of Douglas Fir Plywood, or in any manner fixing or establishing any prices and in connection therewith, discounts, terms, or conditions for sale of such plywood;

2. Restricting or curtailing the production of Douglas Fir Plywood;

3. Compiling, exchanging, or disseminating, between and among members of or subscribers to the respondent association statistical information in respect to the production, sales, shipments, and orders on hand of Douglas Fir Plywood, or any one thereof, unless such statistical information as is made available to members or subscribers is readily, fully, and on reasonable terms made available to the purchasing and distributing trade, and where the identity of the manufacturer, seller, or purchaser cannot be determined through such information, and which has not the capacity or tendency of aiding in securing compliance with announced prices, terms, or conditions of sale;

4. Preparing, adopting, or using any basic price list at which Douglas Fir Plywood is to be sold which contains uniform net extras or additions to be charged thereon, or the preparation, adoption or use of uniform net extras or additions in conjunction with a basic price list;

5. Preparing, maintaining, or circulating any list or classification of buyers of Douglas Fir Plywood considered or recognized by respondents as "jobbers," "wholesalers," or "dealers," or any similar list or classification of buyers; provided that nothing contained in this Paragraph 5 shall prevent the respondent association from maintaining mailing lists of buyers and distributors of Douglas Fir Plywood when the Association shows that such lists are solely for trade promotion purposes;

6. Adoption and using a plan of distribution which includes one or more of the following:

(a) Issuance of a uniform net dealers' price list carrying uniform prices on different quantities and a uniform cash discount;

(b) Adoption of uniform definitions of classes of buyers, and providing for the granting of a uniform discount under uniform prescribed conditions as to who may receive and under what conditions same may be granted;

7. Adopting and using any plan which includes a classification of buyers of Douglas Fir Plywood on the basis of entitlement to price or discount, or communicating to producers or distributors of such

plywood conclusions and findings in reference to such classification;

8. Selling only on a delivered price basis, and in conjunction therewith:

(a) Computing the rail freight rate from any point other than the point of origin of the shipment;

(b) Using a uniform schedule of estimated weights;

(c) Adding a uniform net addition on sales made in the primary market;

9. Refusing to ship to East Coast and Gulf points on any basis other than a C.I.F basis with uniform net additions to the ocean freight rate.

It Is Further Ordered that nothing contained herein shall be deemed to affect lawful relations, including purchase and sale contracts or transactions, among the several respondents, or between a respondent and its subsidiaries, or between subsidiaries of a respondent, or between any one or more of said respondents and any others not parties hereto, and not in unlawful restraint of trade.

It Is Further Ordered, for reasons appearing in the Commission's findings as to the facts in this proceeding, that the amended complaint herein be, and it hereby is, dismissed as to the respondent, Harrison Clark, in his individual capacity, it being understood, however, that said amended complaint is not being dismissed as against the said Harrison Clark as an officer of the respondent, Douglas Fir Plywood Association.

I.

That during all the time in this Petition mentioned, the Oregon-Washington Plywood Company was and is now an Oregon corporation; its principal business is and has been the manufacture and sale of plywood; its general executive and sales office is at Portland, Oregon; it owns and operates a plywood plant at Garibaldi, in Tillamook County, Oregon. It formerly owned and operated a plywood plant and maintained a sales office at Tacoma, Washington. Its principal place of business is now in the State of Oregon, and its principal business has always been conducted in the States of Oregon and Washington.

II.

That on or about May 19, 1949, the Federal Trade Commission of the United States of America issued and caused to be served on the Petitioner and others, its Amended Complaint under the following title:

No. 5529

In the Matter of
Douglas Fir Plywood Association; and Harrison Clark, individually and as Assistant Secretary of Douglas Fir Plywood Association; Douglas Fir Plywood Information Bureau, a voluntary organization; and Associated Plywood Mills, Inc.; Buffelen Manufacturing Co., a corporation; Elliott Bay Mill Company, a corporation; Harbor Plywood Corporation; M & M Wood Working Company, a corporation; Northwest

Door Company, a corporation; Oregon-Washington Plywood Company, a corporation; United States Plywood Corporation; Vancouver Plywood & Veneer Company, a corporation; Washington Veneer Company, a corporation; West Coast Plywood Company, a corporation; The Wheeler, Osgood Co., a corporation; and Anacortes Veneer, Inc., all individually and as members of and subscribers to the Douglas Fir Plywood Association; and Robinson Plywood and Timber Company, a corporation; and Pacific Mutual Door Company, a corporation; Weyerhaeuser Sales Company, a corporation; and Wallace E. Difford.

III.

It is alleged in said Amended Complaint, among other things, that the Petitioner and the other Respondents in the title to said Amended Complaint named, acting in cooperation with each other and through and in cooperation with Respondent Douglas Fir Plywood Association for a substantial period of time since prior to January, 1936, have engaged in an understanding, agreement, combination, conspiracy and planned common course of action among themselves to restrict, restrain and suppress competition in the sale and distribution of plywood products to customers located throughout the several states of the United States and in the District of Columbia by agreeing to fix and maintain prices, terms and discounts at which plywood products are to be sold and to cooperate with each other in the

enforcement and maintenance of fixed prices, terms and discounts by exchanging information as to the prices, terms and conditions at which plywood has been sold and by which it is offered for sale to customers and prospective customers. Said Amended Complaint set forth various acts which the Commission claimed the Petitioner and its correspondents did to accomplish the aforesaid purposes and fixed a time in which the Petitioner and the other Respondents named should answer the Amended Complaint.

IV.

Thereafter this Petitioner filed with said Commission its Answer to said Amended Complaint, in which it admitted certain allegations of the Amended Complaint, but denied that the understanding, agreement, combination, conspiracy and common course of action alleged in the Amended Complaint, or that any agreement or understanding between the Petitioner and any of the other Respondents named in the Amended Complaint, to fix or control prices or to limit production of plywood or any commodities, continued or existed for any period of time subsequent to August 31, 1941.

V.

That after the time fixed for taking or receiving evidence in said proceeding had expired, this Petitioner filed with said Commission a Motion to dismiss the Amended Complaint and said proceedings against the Petitioner on the ground that the Petitioner had denied that the understanding, agree-

ment, combination, conspiracy and common course of action alleged in the Amended Complaint or that any agreement or understanding between the Petitioner and any of the Respondents named in the Amended Complaint, to fix or control prices or limit the production of plywood or any commodities, continued or existed for any period of time subsequent to August 31, 1941, and that no evidence had been submitted or received to prove or establish that this Petitioner participated in or was a party to any agreement or understanding or common course of action with any of its competitors or with anyone, which had the effect of restraining or restricting the production or sale of plywood, or to in any way fix or control the prices of plywood, or other commodities, at any time subsequent to August 31, 1941. That said Motion was denied by the Commission on or about the 20th day of October, 1950, and on the same day the Commission found in substance the following facts:

That the Petitioner, acting in cooperation with the other Respondents named in said Amended Complaint, during a substantial part of the period of time between May, 1935, and August 1, 1941, engaged in an understanding, agreement, combination, conspiracy and planned common course of action among themselves to restrict, restrain and suppress competition in the sale and distribution of plywood products to customers located throughout the several states of the United States and the District of Columbia, by agreeing to fix and main-

tain prices, terms and discounts at which plywood products were to be sold and to cooperate with each other in the enforcement and maintenance of the prices, terms and discounts so fixed, and that the Petitioner during said period, in combination with other Respondents, did various acts which had the effect of fixing or regulating prices and limiting the production of plywood products, and without receiving or considering any evidence found that such acts now have the effect or result of regulating and controlling the prices and production of plywood products.

The Petitioner, in its Answer to the Amended Complaint, expressly denied that any of the facts found relating to the fixing or regulating of prices or limiting the production of plywood, continued or existed subsequent to August 31, 1941, and the Commission did not find that any of said acts were done or that the relationship found to exist between the Petitioner and the other Respondents continued or existed subsequent to August 1, 1941, and the Commission did not find that any of such acts, conduct or relationship was threatened or likely to be resumed.

VII.

From the aforesaid findings, the Commission drew the following conclusion:

“The acts and practices of the respondents, as herein found, were all to the prejudice and injury of the public and of competitors of said respondents; have had a dangerous tendency to

and have actually hindered and prevented competition in the sale of plywood products in interstate commerce; have unreasonably restrained such commerce in plywood products; and have constituted unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.”

VIII.

The Commission did not conclude that the acts or conduct of the Petitioner and the other Respondents practiced between May, 1935, and August 1, 1941, or any of the acts of the Petitioner, had the effect of regulating, fixing or controlling the price or production of plywood products at the time the Amended Complaint was issued or at any time subsequent to August 1, 1941.

IX.

That based upon said Amended Complaint, the Answer of the Petitioner and said findings and conclusions, and without hearing, receiving or considering any evidence, the Commission on October 20, 1950, issued an order commanding this Petitioner and the other Respondents named in said proceedings to forthwith cease and desist from entering into, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination or conspiracy between or among any two or more of said Respondents or between or among any two or more of said Respondents, or between or among any one or more of said Respond-

ents and other producers or sole distributors of plywood products for other producers not parties to the proceedings, to do or perform any of the following acts or things:

1. Fixing, establishing or maintaining uniform prices, and in connection therewith, uniform discounts, terms or conditions of sale for any kind or grade of Douglas Fir Plywood, or in any manner fixing or establishing any prices, and in connection therewith, discounts, terms, or conditions for sale of such plywood;

2. Restricting or curtailing the production of Douglas Fir Plywood;

3. Compiling, exchanging, or disseminating, between and among members of or subscribers to the respondent association statistical information in respect to the production, sales, shipments, and orders on hand of Douglas Fir Plywood, or any one thereof, unless such statistical information as is made available to members or subscribers is readily, fully, and on reasonable terms made available to the purchasing and distributing trade, and where the identity of the manufacturer, seller or purchaser cannot be determined through such information, and which has not the capacity or tendency of aiding in securing compliance with announced prices, terms, or conditions of sale;

4. Preparing, adopting, or using any basic price list at which Douglas Fir Plywood is to be sold which contains uniform net extras or additions to be charged thereon, or the preparation, adoption

or use of uniform net extras or additions in conjunction with a basic price list.

5. Preparing, maintaining, or circulating any list or classification of buyers of Douglas Fir Plywood considered or recognized by respondents as "jobbers," "wholesalers," or "dealers," or any similar list or classification of buyers; provided that nothing contained in this Paragraph 5 shall prevent the respondent association from maintaining mailing lists of buyers and distributors of Douglas Fir Plywood when the Association shows that such lists are solely for trade promotion purposes;

6. Adopting and using a plan of distribution which includes one or more of the following:

(a) Issuance of a uniform net dealers' price list carrying uniform prices on different quantities and a uniform cash discount;

(b) Adoption of uniform definitions of classes of buyers, and providing for the granting of a uniform discount under uniform prescribed conditions as to who may receive and under what conditions same may be granted;

7. Adopting and using any plan which includes a classification of buyers of Douglas Fir Plywood on the basis of entitlement to price or discount, or communicating to producers or distributors of such plywood conclusions and findings in reference to such classification;

8. Selling only on a delivered price basis, and in conjunction therewith:

(a) Computing the rail freight rate from any point other than the point of origin of the shipment;

(b) Using a uniform schedule of estimated weights;

(c) Adding a uniform net addition on sales made in the primary market;

9. Refusing to ship to East Coast and Gulf points on any basis other than a C.I.P basis with uniform net additions to the ocean freight rate.

X.

That a copy of said order was served on this Petitioner through registered United States mail on, and not any time prior to November 6, 1950.

XI.

That the Commission committed error in said proceedings in the following particulars:

(a) In not allowing, and in dismissing Petitioner's motion to dismiss the Amended Complaint and the aforesaid proceedings against the Petitioner;

(b) In finding that the acts and conduct of the Petitioner and the other Respondents named in said proceeding committed prior to August 1, 1941, now have the effect or result of fixing or regulating the prices or production of plywood products.

(c) In making, promulgating and causing to be served upon the respondent the aforesaid Cease and Desist Order dated October 20, 1950.

Prayer

The Petitioner prays that the aforesaid proceedings before the Commission be reviewed by this Court and the aforesaid Cease and Desist Order of the Commission dated October 20, 1950, be set aside. That your Petitioner be awarded its costs and disbursements in this proceedings and have such other and additional relief as the law and the facts in the premises may justify.

Grounds Relied On

1. That the Petitioner's Answer denies that the understanding, agreement, combination, conspiracy or planned course of action, or any acts in connection therewith alleged in the Amended Complaint, or that any agreement or understanding between the Petitioner and any of the other respondents, to fix, maintain, regulate, affect or control prices or limit the production of plywood products or any commodities, continued or existed for any period of time subsequent to August 31, 1941. That no evidence was offered or received of the continuance or existence of any such acts or conduct subsequent to August 31, 1941. That the Commission did not find that any of said acts or conduct or any unlawful acts alleged in the Amended Complaint were done or practiced subsequent to August 31, 1941, and did not find that the Petitioner has threatened or is likely to resume any activities or conduct that will fix, control, regulate or affect the prices or production of plywood or any commodity, or in any way violate any law or regulation of the United States.

2. That the pleadings, the facts found, the conclusions made and the proceedings contained in the record do not justify the order made by the Commission and which the Court is asked to set aside.

Respectfully submitted,

/s/ GEORGE J. PERKINS,

Attorney for Oregon-Wash-
ington Plywood Company.

State of Oregon,
County of Multnomah—ss.

I, Dennis M. Slenning, being first duly sworn, say: That I am the Vice-President of the Oregon-Washington Plywood Company, the Petitioner above named; and the statements contained in the foregoing Petition are true as I verily believe.

/s/ DENNIS M. SLENNING.

Subscribed and sworn to before me this 29th day of December, 1950.

[Seal] /s/ GEO. J. PERKINS,
Notary Public in and for the State of Oregon, Re-
siding at Portland.

My Commission Expires December 8, 1952.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 3, 1951.

In the United States Court of Appeals
for the Ninth Circuit

No. 12793

WASHINGTON VENEER CORPORATION,
Successor to WASHINGTON VENEER
COMPANY,

Petitioner,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

PETITIONER, WASHINGTON VENEER COR-
PORATION'S DESIGNATION AND
STATEMENT OF POINTS ON REVIEW

Comes now Petitioner, Washington Veneer Cor-
poration, and adopts the following as the points
upon which it relies in connection with its petition
to review and set aside order of Federal Trade
Commission in the above cause:

1. Federal Trade Commission was in error in
entering its Cease and Desist Order, or any order
against Petitioner for the following reasons:

(a) There was no evidence or finding of
any wrongful or illegal act in violation of the
Federal Trade Commission Act by this peti-
tioner subsequent to August 1, 1941.

(b) No order of any kind should be en-
tered in this case by the Federal Trade Com-
mission except an order of dismissal for the
reason that the record as now constituted

clearly shows that August 1, 1941, is the last date on which any illegal act or violation of the Federal Trade Commission Act took place and that this proceeding was not commenced until March 1, 1948.

(c) The public interest is not served by entering an order in 1950 to cease and desist doing something that petitioner has not done since some time between 1935 and 1941.

2. The Federal Trade Commission was in error in making its findings, Paragraph Nine, that the results of the said understanding have been "and now are" to violate the Federal Trade Commission Act. There is no evidence of any kind in the record that this petitioner violated any provision of the Federal Trade Commission Act after August 1, 1941.

/s/ W. E. EVENSON,

/s/ WILLARD E. SKEEL,

Attorneys for Washington
Veneer Corporation.

Receipt of copy acknowledged.

[Endorsed]: Filed February 21, 1951.

In the United States Court of Appeals
for the Ninth Circuit
No. 12774

OREGON - WASHINGTON PLYWOOD COM-
PANY, a Corporation,

vs.

FEDERAL TRADE COMMISSION OF THE
UNITED STATES OF AMERICA.

POINTS RELIED ON BY PETITIONER

To the Federal Trade Commission, Washington 25,
D. C.

You are notified that in the proceedings in the above-entitled Court to set aside the Cease and Desist Order issued by the Federal Trade Commission against Petitioner, Oregon-Washington Plywood Company and others, October 20, 1950, the Petitioner intends to rely upon the following

Points

I.

That no evidence was received or considered by the Commission in said proceedings, and its Findings, Conclusions and Order are based solely upon the pleadings, which, as to this Petitioner, consist of:

(a) The Amended Complaint (Vol. 1, Pages 188-201 Transcript).

(b) The Petitioner's Answer to Amended Complaint (Vol. 1, Pages 216-217 Transcript).

(c) The Petitioner's Motion to Dismiss (Vol. 1, Pages 252-254 Transcript).

II.

The Petitioner's Answer denies that the understanding, agreement, combination, conspiracy and common course of action alleged in the Amended Complaint, or that any agreement or understanding between the Petitioner and any of the other Respondents named in the Amended Complaint, to fix or control prices or limit the production of plywood or other commodities, continued or existed for any period of time subsequent to August 31, 1941. The Commission should have assumed, and this Court should assume, that the Petitioner's Answer is true.

III.

The Commission did not find that any of the unlawful acts, conduct or practices alleged in the Amended Complaint were continued or practiced subsequent to August 1, 1941; or that the Petitioner had threatened or was likely to resume any of such acts, conduct or practices.

IV.

That there was no evidence, or anything in the pleadings, to prove or establish that any of the acts or things done by this Petitioner and other Respondents in the proceedings "during a substantial part of the period between May, 1935, and August 1, 1941." (The acts are stated in paragraphs Seven and Eight, Pages 8 and 9 of the Findings), had the capacity, tendency and results at the time the Findings were made, October 20, 1950, or at any time subsequent to August 1, 1941, to interfere with, or curtail the production or to fix or regulate the

prices of plywood products, or to prevent or accomplish any of the things stated in Paragraph Nine of the Findings. That such Findings are without evidence or substance to sustain them. (Findings—Vol. 1, Pages 272-291A Transcript).

V.

While the Commission concluded that the acts, conduct and practices of the Petitioner and others, prior to August 1, 1941, have hindered and prevented competition in the sale of plywood products, and have constituted unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, it did not conclude that such acts and practice had such effect and results at the time the conclusions were drawn, October 20, 1950, or at any time subsequent to August 1, 1941. (Page 13 of Findings and Conclusions, Vol. 1, Pages 272-291A Transcript.)

VI.

That it was unnecessary for the Commission, and it did not have the authority, to order the Petitioner to cease and desist from acts, conduct or practices it had not done, committed or practiced since August, 1941, and which it had not threatened, or indicated any intention, to resume.

VII.

That the Commission committed error in the following particulars:

(1) In failure to allow Petitioner's Motion to Dismiss (Motion—Vol. 1, Pages 252-254 Transcript).

(2) In denying Petitioner's Motion to Dismiss (Order—Vol. 1, Pages 252-254 Transcript).

(3) In finding that the acts and conduct of the Petitioner prior to August 1, 1941, as stated in the Findings, had the capacity, tendency and results on October 20, 1950, or at any time subsequent to August 1, 1941, of interfering with and curtailing the production, and fixing or regulating the prices, of plywood, or of accomplishing or prohibiting any of the acts or results stated in Paragraph Nine of the Findings. (Page 12 of Findings—Vol. 1, Pages 272-291A Transcript).

(4) In issuing or causing to be entered the Cease and Desist Order dated October 20, 1950 (Order—Vol. 1, Pages 291B-296 Transcript).

Record Material to the Consideration of the Review

The Petitioner believes only the following records material to the consideration of review:

The date of filing the Original Complaint.

The Amended Complaint and date filed.

Answer of Oregon-Washington Plywood Company to Amended Complaint.

The Motion of each Petitioner and dates filed.

The Order denying each Motion.

The record should show that no evidence was received or considered and the Findings, Conclusions and Cease and Desist Order were based entirely on the pleadings.

The respective Petitions to review or set aside Order to Cease and Desist, unless the Commission

admits that petitions were regularly filed and that the Court had jurisdiction.

/s/ GEORGE J. PERKINS,
Attorney for Oregon-Wash.
Plywood Company.

State of Oregon,
County of Multnomah—ss.

I, George J. Perkins, being first duly sworn, say: That I am attorney for Oregon-Washington Plywood Company, Petitioner named in the above and foregoing entitled proceedings. That on the 27th day of February, 1951, I placed and sealed in an envelope a full and true copy of the above and foregoing statement of Points and designation of record which I considered should be printed in said proceedings; that I addressed said envelope, containing said copy, to Federal Trade Commission, Washington 25, D. C., attention Mr. James W. Cassedy, Asst. General Counsel in charge of appeals, fully prepaid the postage thereon, and deposited the same in the United States Post Office at Portland, Oregon, to be forwarded to said addressee in the usual course of the mail.

/s/ GEORGE J. PERKINS.

Subscribed and sworn to before me this 27th day of February, 1951.

[Seal] /s/ JOHN A. WOERNDLE,
Notary Public for Oregon.

My commission expires April 4, 1954.

[Endorsed]: Filed February 28, 1951.

In the United States Court of Appeals
for the Ninth Circuit

No. 12798

DOUGLAS FIR PLYWOOD ASSOCIATION, a Corporation; DOUGLAS FIR PLYWOOD INFORMATION BUREAU, a Voluntary Organization; ANACORTES VENEER, INC., a Corporation; ASSOCIATED PLYWOOD MILLS, INC., a Corporation; ELLIOTT BAY MILL COMPANY, a Corporation; HARBOR PLYWOOD CORPORATION, a Corporation; UNITED STATES PLYWOOD CORPORATION, a Corporation; VANCOUVER PLYWOOD & VENEER, INC., a Corporation; ROBINSON PLYWOOD AND TIMBER COMPANY, a Corporation; WEYERHAEUSER SALES COMPANY, a Corporation; and WALLACE E. DIFFORD,

Petitioners,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

STATEMENT OF POINTS TO BE RELIED
UPON AND DESIGNATION OF THE
PARTS OF THE RECORD TO BE
PRINTED

Come now the petitioners in the above-entitled cause and state that the points upon which they intend to rely in this court in this cause are as follows:

I.

The respondent Federal Trade Commission was in error in entering any order to cease and desist. There was no finding, or pleading upon which to base such a finding, of any wrongful or illegal action subsequent to August 1, 1941, and due to the long lapse of time intervening between said date of August 1, 1941, and the initiation of proceedings by the respondent herein on March 1, 1948, and the entry of said order on October 20, 1950, no cease and desist order of any kind should have been issued.

II.

The respondent Federal Trade Commission was in error in concluding in Paragraph Nine of the Findings of Fact that the results of the said understanding have been "and now are" to violate the Federal Trade Commission Act in various particulars since the Commission had already found in Paragraph Seven of the Findings, the only finding that could be made on the record, namely, that the alleged illegal conduct occurred for some time during a substantial part of the period of time between May, 1935, and August 1, 1941.

Appellant further states that only the following parts of the Record as filed in this court are deemed necessary to be printed for the consideration of the Points set forth above:

Volume 1 of Record

Title of Paper	Pages
Amended Complaint	188 -201

Answer of Respondent, Douglas Fir Plywood Association and Douglas Fir Plywood Information Bureau, a voluntary organization, to Amended Complaint202 -203

Answer of Respondent, Associated Plywood Mills, Inc., to Amended Complaint205

Answer of Respondent, Elliott Bay Mill Company to Amended Complaint.208

Answer of Respondent, Harbor Plywood Corporation, to Amended Complaint. .209 -210

Answer of Respondent, United States Plywood Corporation, to Amended Complaint218

Answer of Respondent, Vancouver Plywood & Veneer Company, to Amended Complaint219

Answer of Respondent, Anacortes Veneer, Inc., to Amended Complaint.225

Answer of Respondent, Robinson Plywood and Timber Company, to Amended Complaint226

Answer of Respondent, Weyerhaeuser Sales Company, to Amended Complaint229 -230

Answer of Respondent, Wallace E. Dufford, to Amended Complaint.231

Request to Trial Examiner to Close the Record for the Reception of Testimony and Other Evidence.232

Order Closing Reception of Evidence
and All Other Proceedings Before
Trial Examiner.....244

Findings as to the Facts and Conclu-
sions272 -291A

Order to Cease and Desist.....291B-296

Also the following papers filed in this court:

Statement of Points to be relied Upon and Designation of the Parts of the Record to be Printed.

Notice of Filing Petition.

Affidavit of Proof of Service.

Petition to Review and Set Aside Order of Federal Trade Commission.

Dated this 26th day of February, 1951.

McMICKEN, RUPP &
SCHWEPPE,

/s/ ALFRED J. SCHWEPPE,

/s/ M. A. MARQUIS,

/s/ JOHN N. RUPP,

Attorneys for Petitioners: Douglas Fir Plywood Association; Douglas Fir Plywood Information Bureau; Anacortes Veneer, Inc.; Associated Plywood Mills, Inc.; Elliott Bay Mill Company; Harbor Plywood Corporation; United States Plywood Corporation; Vancouver Plywood & Veneer, Inc.; Robinson Plywood and Timber Company; Weyerhaeuser Sales Company; and Wallace E. Difford.

KRAUSE, HIRSCH, LEVIN &
HEILPERN,

/s/ RAYMOND T. HEILPERN,
Of Counsel for Petitioner, United States Plywood
Corporation.

/s/ J. E. NOLAN.

BRIGGS, GILBERT, MORTON,
KYLE & MACARTNEY,

/s/ J. NEIL MORTON,
Of Counsel for Petitioner, Weyerhaeuser Sales
Company.

Service of the foregoing Statement of Points to
be Relied Upon and Designation of the Parts of
the Record to be Printed admitted at Washington,
D. C., this 1st day of March, 1951.

FEDERAL TRADE
COMMISSION,

By /s/ D. C. DANIEL,
Secretary.

[Endorsed]: Filed March 5, 1951.

In the United States Court of Appeals
for the Ninth Circuit

No. 12799

PACIFIC MUTUAL DOOR COMPANY, a Corporation,

Petitioner,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

STATEMENT OF POINTS TO BE RELIED
UPON AND DESIGNATION OF THE
PARTS OF THE RECORD TO BE
PRINTED

Comes now the petitioner, Pacific Mutual Door Company, a corporation, and states that the points upon which it intends to rely in the above-entitled court in this cause are as follows:

I.

That the Federal Trade Commission erred in entering the Cease and Desist Order dated the 20th day of October, 1950. There was no finding or pleading upon which to base such a finding of any wrongful or illegal action subsequent to August 1, 1941, and due to the long lapse of time intervening between said date of August 1, 1941, and the initiation of proceedings by the respondent herein on March 1, 1948, and the entry of the said order on October 20, 1950, no cease and desist order of any kind should have been entered.

II.

The respondent Federal Trade Commission was in error in concluding in Paragraph Nine of the Findings of Fact that the results of the said understanding have been "and now are" to violate the Federal Trade Commission Act in various particulars since the Commission had already found in Paragraph Seven of the Findings, the only finding that could be made on the record, namely, that the alleged illegal conduct occurred for some time during a substantial part of the period of time between May, 1935, and August 1, 1941.

Appellant further states that only the following parts of the Record as filed in this court are deemed necessary to be printed in the consideration of the points set forth above:

Volume 1 of Record

Title of Paper	Pages
Amended Complaint	188 -202
Answer of Respondent, Pacific Mutual Door Company, a Corporation.....	227 .228
Request to Trial Examiner to Close the Record for the Reception of Testimony and Other Evidence.....	232
Order Closing Reception of Evidence and All Other Proceedings Before Trial Examiner	244
Findings as to the Facts and Conclu- sions	272 -291A
Order to Cease and Desist.....	291B-296

Also the following papers filed in this Court:
Statement of Points to be Relied Upon and
Designation of the Parts of the Record to be
Printed.

Petition to Review and Set Aside Order of Fed-
eral Trade Commission.

Dated this 2nd day of March, 1951.

NEAL, BONNEVILLE &
HUGHES,

By /s/ WM. P. HUGHES,
Attorneys for Petitioner, Pacific Mutual Door
Company, a Corporation.

[Endorsed]: Filed March 5, 1951.

In the United States Court of Appeals
for the Ninth Circuit
Nos. 12792 and 12791

NORTHWEST DOOR COMPANY, a Corpora-
tion; and THE WHEELER, OSGOOD, CO.,
a Corporation,

Petitioners,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

STATEMENT OF POINTS TO BE RELIED
UPON AND DESIGNATION OF THE
PARTS OF THE RECORD TO BE
PRINTED

Come now the petitioners in the above-entitled
cause and state that the points upon which they

intend to rely in this court in this cause are as follows:

I.

The respondent Federal Trade Commission was in error in entering any order against petitioners to cease and desist. There was no finding or pleading upon which to base such a finding of any wrongful or illegal action subsequent to August 1, 1941, and due to the long period of time intervening between said date of August 1, 1941, and the filing of the original Complaint herein by the Commission on March 1, 1948, and the entry of said order on October 20, 1950, no cease and desist order of any kind should have been issued.

II.

Many of the acts and transactions set out in the Complaint of the Federal Trade Commission were originally imposed upon petitioners and the rest of the plywood industry, by the United States Government, acting under the National Recovery Act.

III.

The Federal Trade Commission was in error in stating in Paragraph Nine of its findings of fact that the results of said understandings have been "and now are" to violate the Federal Trade Commission Act in various particulars since the Federal Trade Commission had already found in Paragraph Seven that the deduction complained of occurred only sometime during the period between May 1, 1935, and August 1, 1941.

IV.

Petitioners further state that only the following parts of the record as filed in this court are deemed necessary to be printed for the consideration of the points set forth above:

Volume 1 of Record

Title of Record	Pages
Original Complaint	1- 15
Original Answer of Northwest Door Company.	
Original Answer of The Wheeler, Osgood Co.	
Amended Complaint.....	188-201
Amended Answer, Northwest Door Company	213-215
Amended Answer, The Wheeler, Osgood Co.	261-262
Request to Trial Examiner to Close the Record for the Reception of Testimony and Other Evidence	145
Order Closing Reception of Evidence and All Other Proceedings Before Trial Examiner	149
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Also the following papers filed in this court:

Statement of Points to be Relied Upon and Designation of the Parts of the Record to be Printed.

Notice of Filing Petition.

Affidavit of Proof of Service.

Petition to Review and Set Aside Order of Federal Trade Commission.

All of which were filed on behalf of these petitioners.

Dated this 1st day of March, 1951.

EISENHOWER, HUNTER
and RAMSDELL,

/s/ E. N. EISENHOWER,

/s/ CHAS. D. HUNTER, JR.,

/s/ JAMES V. RAMSDELL,

Attorneys for Petitioners, Northwest Door Company; The Wheeler, Osgood Co.

[Endorsed]: Filed March 5, 1951.

In the United States Court of Appeals
For the Ninth Circuit

No. 12802

M AND M WOOD WORKING COMPANY, an
Oregon Corporation,

Petitioner,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

POINTS AND DESIGNATION OF RECORD

Petitioner, M and M Wood Working Company, will rely upon the following points in support of its petition to review and set aside the cease and desist order issued by the Federal Trade Commission on October 20, 1950:

I.

The Federal Trade Commission erred in finding, in Paragraph Nine of its Findings of Fact dated October 20, 1950, that the capacity, tendency and results of an understanding, agreement, combination, conspiracy and planned common course of action, and the acts and things done thereunder and pursuant thereto, "now are" as set forth in said findings, because there was no evidence offered or received that such understanding, agreement, combination, conspiracy and planned common course of action, or the acts and things done thereunder and pursuant thereto, existed or occurred, or were threatened or likely to exist or occur, or had any

capacity, tendency or results or other continuing effect, at any time after August 1, 1941.

II.

The Federal Trade Commission erred in issuing the cease and desist order dated October 20, 1950, or any cease and desist order, because there was no evidence offered or received that an understanding, agreement, combination, conspiracy and planned common course of action, or the acts and things done thereunder and pursuant thereto, existed, occurred, or were threatened or likely to exist or occur, or had any tendency, capacity or results or other continuing effect, at any time after August 1, 1941. Due to the long lapse of time between August 1, 1941, and the initiation of proceedings by the respondent on March 1, 1948, no cease and desist order of any kind should have been issued.

The Petitioner states that the following portions of the record are necessary for the consideration of the above points:

Volume I of Record

Title of Paper	Pages
The title, docket number, word "complaint" and last sentence of the original complaint.....	1A-15
Amended Complaint	188-201
Answer of M and M Wood Working Company to Amended Complaint.....	211-212
Order Closing Reception of Evidence.....	244
Findings and Conclusions.....	272-291A
Order to Cease and Desist.....	291B-296

Also the following papers filed in this Court:

Points and Designation of Record

Notice of Filing Petition

Affidavit of Proof of Service

Petition to Set Aside Cease and Desist Order
Issued by Federal Trade Commission.

Dated this 5th day of March, 1951.

SABIN & MALARKEY,

/s/ ROBERT L. SABIN,

/s/ HOWARD H. CAMPBELL,

Attorneys for Petitioner M and M Wood Working
Company.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 7, 1951. [3]

In the United States Court of Appeals
For the Ninth Circuit

No. 12800

WEST COAST PLYWOOD COMPANY, a Corporation,

Petitioner,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

Statement of Points to be Relied Upon
and

Designation of the Parts of the Record to Be Printed

Comes now the petitioner in the above-entitled cause and states that the points upon which they intend to rely in this cause are as follows:

I.

The respondent Federal Trade Commission was in error in entering any order to cease and desist. There was no finding, or pleading upon which to base such a finding, of any wrongful or illegal action subsequent to August 1, 1941. These proceedings were initiated on March 1, 1948, and the entry of the cease and desist order was on October 20, 1950. Due to the long lapse of time intervening between August 1, 1941, the date of the initiation of proceedings and the entry of the order, no cease and desist order of any kind should have been issued.

II.

The respondent Federal Trade Commission was in error in concluding in Paragraph Nine of the Findings of Fact that the results of the said understanding have been "and now are" to violate the Federal Trade Commission Act in various particulars since the Commission had already found in Paragraph Seven of the Findings, the only finding that could be made on the record, namely, that the alleged illegal conduct occurred for some time during a substantial part of the period of time between May, 1935, and August 1, 1941.

Appellant hereby designates the following portions of the record which are material for the consideration of the points set forth above:

Volume I of Record

Title of Paper	Pages
Amended Complaint	188-201
Answer of West Coast Plywood Company	222
Order Closing Reception of Evidence and All Other Proceedings Before Trial Examiner	244
Findings as to the Facts and Conclusions.	272-291A
Order to Cease and Desist.	291B-296

Also the following papers filed in this Court:

- Statement of Points to Be Relied Upon and Designation of the Parts of the Record to Be Printed
- Notice of Filing Petition
- Affidavit of Proof of Service

Petition to Review and Set Aside Order of Federal Trade Commission

Dated this 6th day of March, 1951.

/ THEODORE B. BRUENER,
Attorney for Petitioner West Coast Plywood Company.

[Endorsed]: Filed March 8, 1951.

In the United States Court of Appeals
For the Ninth Circuit

Nos. 12798, 12774, 12791, 12792, 12793, 12799,
12,800 and 12802.

[Title of Causes.]

STIPULATION RESPECTING PRINTING
OF THE RECORD HEREIN

It is hereby stipulated between the Petitioners and the Respondent in all of the above-entitled causes as follows:

Whereas, the Record to be printed in the above-entitled causes would contain duplications of many papers, all of the above-entitled causes having been heard before the Federal Trade Commission as part of one proceeding, and

Whereas, the issues in all of the above-entitled causes are substantially the same;

Now, therefore, in the interest of economy and in the interest of the convenience of this Court and of the parties hereto in examining the printed Record,

It is hereby stipulated that there shall be but one

Record printed for all of the above-entitled causes, containing, without duplication, designations of the Record by all parties hereto, and that said Record shall bear the caption of the names of all of the above-entitled causes.

It is further stipulated by and between the Petitioners above named only, that the cost of printing the Record will be divided among them pro rata by agreement separately arrived at.

Dated at Seattle, Washington, this 16th day of March, 1951.

McMICKEN, RUPP &
SCHWEPPE,

/s/ ALFRED J. SCHWEPPE,

/s/ M. A. MARQUIS,

/s/ JOHN N. RUPP,

Attorneys for Petitioners: Douglas Fir Plywood Association; Douglas Fir Plywood Information Bureau; Anacortes Veneer, Inc.; Associated Plywood Mills, Inc.; Elliott Bay Mill Company; Harbor Plywood Corporation; United States Plywood Corporation; Vancouver Plywood & Veneer, Inc.; Robinson Plywood and Timber Company; Weyerhaeuser Sales Company; and Wallace E. Difford.

KRAUSE, MIRSCH, LEVIN
& HEILPERN,

/s/ RAYMOND T. HEILPERN,

Of Counsel for Petitioner United States Plywood Corporation.

/s/ J. E. NOLAN,

BRIGGS, GILBERT, MORTON,
KYLE & MACARTNEY,

/s/ J. NEIL MORTON,

Of Counsel for Petitioner Weyerhaeuser Sales Com-
pany.

/s/ W. E. EVENSON,

/s/ WILLARD SKEEL,

Attorneys for Petitioner Washington Veneer Cor-
poration.

Dated at Tacoma, Washington, this 21st day of
March, 1951.

EISENHOWER, HUNTER &
RAMSDELL,

By /s/ E. N. EISENHOWER,

Attorneys for Petitioners The Wheeler, Osgood Co.;
and Northwest Door Company.

/s/ OWEN P. HUGHES,

Attorney for Petitioner Pacific Mutual Door Com-
pany.

Dated at Aberdeen, Washington, this 23rd day of March, 1951.

/s/ THEODORE B. BRUENER,
Attorney for Petitioner West Coast Plywood Com-
pany.

Dated at Portland, Oregon, this 26th day of March, 1951.

/s/ GEORGE J. PERKINS,
Attorney for Petitioner Oregon-Washington Ply-
wood Company.

SABIN & MALARKEY,
/s/ HOWARD H. CAMPBELL,
Attorneys for Petitioner M & M Wood Working
Company.

Dated at Washington, D. C., this 31st day of March, 1951.

/s/ JAMES W. CASSEDY,
Assistant General Counsel, Federal Trade Commis-
sion, Washington, D. C.

[Endorsed]: Filed April 9, 1951.

[Title of Court of Appeals and Cause.]

PETITION TO SET ASIDE CEASE AND DE-
SIST ORDER ISSUED BY FEDERAL
TRADE COMMISSION

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

The Petitioner, M and M Wood Working Com-
pany, respectfully states:

I.

M & M Wood Working Company is a cor-
poration organized and existing under the laws of
the State of Oregon. Its principal place of business
is located at 2301 North Columbia Boulevard, Port-
land 17, Oregon. It is engaged in the business of
manufacturing and selling lumber products in the
States of Oregon, Washington and California.

II

In a proceeding entitled:

“In the Matter of
“DOUGLAS FIR PLYWOOD ASSOCIATION,
a Corporation; HARRISON CLARK, Indi-
vidually and as Assistant Secretary of Douglas
Fir Plywood Association; DOUGLAS FIR
PLYWOOD INFORMATION BUREAU, a
Voluntary Organization; and ASSOCIATED
PLYWOOD MILLS, INC., a Corporation;
BUFFELEN MANUFACTURING CO., a
Corporation; ELLIOTT BAY MILL COM-
PANY, a Corporation; HARBOR PLY-

WOOD COMPANY, a Corporation; M & M WOOD WORKING COMPANY, (Erroneously Described in the Complaint as M & M Woodworking Company), a Corporation; NORTHWEST DOOR COMPANY, a Corporation; OREGON-WASHINGTON PLYWOOD COMPANY, a Corporation; UNITED STATES PLYWOOD CORPORATION, a Corporation; VANCOUVER PLYWOOD & VENEER COMPANY, a Corporation; WASHINGTON VENEER COMPANY, a Corporation; WEST COAST PLYWOOD COMPANY, a Corporation; THE WHEELER, OSGOOD CO., a Corporation, and ANA-CORTES VENEER, INC., a Corporation; All Individually and as Members of and Subscribers to the Douglas Fir Plywood Association, and ROBINSON PLYWOOD AND TIMBER COMPANY, a Corporation; PACIFIC MUTUAL DOOR COMPANY, a Corporation; WEYERHAEUSER SALES COMPANY, a Corporation; and WALLACE E. DIFFORD,"

the Federal Trade Commission alleged that certain acts and practices were occurring in the States of Oregon, Washington and California.

III.

On October 20, 1950, the Federal Trade Commission made certain findings of fact and conclusions and issued an order directing the Petitioner and others therein named to cease and desist from

certain practices therein specified. The order is a final decision and order of the Commission.

IV.

On November 6, 1950, the Petitioner was served with a copy of the findings of fact, conclusions and order, through registered United States mail.

V.

The Commission erred (a) in issuing the order, and (b) in finding that the acts and practices were occurring on October 20, 1950, because there was no evidence that any act or practice complained of had occurred after August 1, 1941.

Wherefore, the Petitioner prays that the aforesaid proceedings before the Commission be reviewed by this Court and the Cease and Desist Order dated October 20, 1950, be set aside, and that your Petitioner be awarded its costs and disbursements in this proceeding and have such other and additional relief as the Court may deem proper.

Respectfully submitted,

M & M WOOD WORKING
COMPANY,

By /s/ ROBERT L. SABIN,
Secretary.

SABIN AND MALARKEY,
/s/ ROBERT L. SABIN,
/s/ HOWARD H. CAMPBELL,
Attorneys for Petitioner.

State of Oregon,
County of Multnomah—ss.

I, Robert L. Sabin, being first duly sworn, say:
I am the Secretary of M AND M Wood Working
Company, the Petitioner above named, and the
statements contained in the foregoing Petition are
true as I verily believe.

/s/ ROBERT L. SABIN.

Subscribed and sworn to before me this 28th day
of December, 1950.

[Seal] /s/ F. M. SCHNIEDERJOST,
Notary Public for Oregon.

My Commission Expires 3/27/51.

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 29, 1950.

